By Mr. FINO:
H.R. 17834. A bill for the relief of Francesca Noto; to the Committee on the Judiciary.

By Mr. HALPERN:
H.R. 17835. A bill for the relief of Evanthia Psichopedas; to the Committee on the Judiciary.

By Mr. NEDZI:
H.R. 17836. A bill for the relief of Mrs. Wanda S. Stempniewicz; to the Committee on the Judiciary.

By Mr. O'HARA of Illinois:
H.R. 17837. A bill for the relief of Youssef El-Naggar (Brother Cyril); to the Committee on the Judiciary.

By Mr. PELLY:
H.R. 17838. A bill for the relief of Miss Zaida Zapata deDios; to the Committee on the Judiciary.

By Mr. PEPPER:
H.R. 17839. A bill for the relief of Israel Mizrahy, M.D.; to the Committee on the Judiciary.

By Mr. POWELL:
H.R. 17840. A bill for the relief of Nartey Emmanuel; to the Committee on the Judiciary.

By Mr. SENNER:
H.R. 17841. A bill for the relief of Leonard N. Rogers, John P. Corcoran, Mrs. Charles W. (Ethel J.) Pensinger, Marion M. Lee, and Arthur N. Lee; to the Committee on Agriculture.

PETITIONS, ETC.

Under clause 1 of rule XXII,

432. The SPEAKER presented a petition of the Alabama League of Aging Citizens, Montgomery, Ala., relative to the high cost of living and creeping inflation, which was referred to the Committee on Banking and Currency.

SENATE

MONDAY, SEPTEMBER 19, 1966

(Legislative day of Wednesday, September 7, 1966)

The Senate met at 12 o'clock meridian, on the expiration of the recess, and was called to order by Hon. HARRY F. BYRD, JR., a Senator from the State of Virginia.

Rabbi Henry Okolica, Congregation Tephereth Israel, New Britain, Conn., offered the following prayer:

Almighty God, eternal Father, this is a new day, which the Lord has made. These are days of penitence, days of awakening; days which might bring about the kingdom of God on earth.

We pray for divine assistance in our task to make our lives more useful and charitable. Help us to remove the crust of selfishness and arrogance. Let us not cast away God's precious gift of love and kindness. Let us overcome fear with resoluteness, shame with inner pride. For in the fashion of greed do we reject these matters beyond the grasp of our immediate understanding.

As a nation, O God, we are as strong as the components of our character; as individuals, as honorable as the foundation of our total being.

Let us bear no malice, foster no strife, seek no vengeance, but execute justice and love mercy; for the world is mine, sayest the Lord. Give us a heart of wisdom, a mind of discerning discretion. Let our Nation's symbols shine brightly, the stars and the eagle reflect our pride, enlightened leadership brighten our skies, to fulfill the dream of our forebears, that we be a holy nation of free men and women, to lift the canopy of freedom to protect, lest mankind fall into the shadow of tyranny and enslavement; that our message may raise their hopes, as our flag shows its meaning; that we are not cowards, but honest men, not prude politicians, but valiant defenders. Help us, O God, toward this end. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 19, 1966.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. HARRY F. BYRD, JR., a Senator from the State of Virginia, to perform the duties of the Chair during my absence.

CARL HAYDEN,
President pro tempore.

Mr. BYRD of Virginia thereupon took the chair as Acting President pro tempore.

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the Journal of the proceedings of Friday, September 16, 1966, was approved.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, under the unanimous-consent agreement of last week, there will be a brief period for the transaction of routine morning business, I understand, and during that time the unfinished business will not be displaced. Do I understand correctly?

The ACTING PRESIDENT pro tempore. The Senator understands correctly.

ROUTINE MORNING BUSINESS

Under the order entered on Wednesday, September 14, 1966, the following routine morning business was transacted.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Geisler, one of his secretaries.

APPOINTMENTS BY THE VICE PRESIDENT

The VICE PRESIDENT. The Chair appoints the Senator from Rhode Island [Mr. PELL] and the Senator from Wyoming [Mr. SIMPSON] as congressional advisers to attend the 14th General Conference of the United Nations Educational, Scientific, and Cultural Organization, known as UNESCO, in Paris from October 25 to November 30, 1966.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

H.R. 3041. An act to amend title 10, United States Code, to exempt certain contracts with foreign contractors from the requirement for an examination-of-records clause;

H.R. 11979. An act to extend the authority for the payment of special allowances to evacuated dependents of members of the uniformed services, and for other purposes;

H.R. 13712. An act to amend the Fair Labor Standards Act of 1938 to extend its protection to additional employees, to raise the minimum wage, and for other purposes;

H.R. 14026. An act to provide for the more flexible regulation of maximum rates of interest or dividends payable by banks and certain other financial institutions on deposits or share accounts, to authorize higher reserve requirements on time deposits at member banks, to authorize open market operations in agency issues by the Federal Reserve banks, and for other purposes; and

H.R. 15005. An act to amend title 10, United States Code, to increase the authorized numbers for the grade of major, lieutenant colonel, and colonel in the Air Force in order to provide active duty promotion opportunities for certain officers, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations, without amendment:

H. Con. Res. 416. Concurrent resolution to request the President of the United States to urge certain actions in behalf of Lithuania, Estonia, and Latvia (Rept. No. 1606).

By Mr. FULBRIGHT, from the Committee on Foreign Relations, with an amendment:

H.R. 14019. An act to amend the Foreign Service Buildings Act, 1926, to authorize additional appropriations, and for other purposes (Rept. No. 1607).

By Mr. METCALF, from the Committee on Interior and Insular Affairs, with amendments:

S. 3485. A bill to amend section 3 of the act of July 23, 1955 (ch. 375, 69 Stat. 368) (Rept. No. 1608).

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. GRIFFIN:

S. 3838. A bill to amend the Internal Revenue Code of 1954 to exempt servicemen from the excise tax on transportation by air; to the Committee on Finance.

By Mr. METCALF:

S. 3839. A bill to amend the act entitled "An act to authorize the Secretary of the Air Force to establish land-based air warning and control installations for the national security, and for other purposes," approved March 30, 1949, in order to clarify the intent of Congress with respect to the procurement of communication and power services necessary to carry out the provisions of such act; to the Committee on Armed Services.

(See the remarks of Mr. METCALF when he introduced the above bill, which appear under a separate heading.)

CLARIFICATION OF INTENT OF CONGRESS WITH RESPECT TO PROCUREMENT OF COMMUNICATION AND POWER SERVICES

Mr. METCALF. Mr. President, I introduce, for appropriate reference, a bill designed to assure that all suppliers of communications and electric power have an opportunity, within their service areas, to serve defense facilities.

Need for this legislation results from a strict interpretation placed by the Defense Department on Public Law 84–968.

That law grew out of a situation in which the military officials, seeking telephone or electric service in connection with the SAGE system, asked large investor-owned utilities to supply the service, even though the facility to be served was within the territory of a customer-owned cooperative. The Federal Government was discriminating against the cooperatives and abetting piracy of their territory by large, adjacent utilities.

Public Law 84–968 provided that in procuring communications and electric service, "the Secretary of the Air Force shall utilize to the fullest extent practicable the facilities and capabilities of communication common carriers, including rural telephone cooperatives, within their respective service areas and for power supply shall utilize to the fullest extent practicable, the facilities and capabilities of public utilities and rural electric cooperatives within their respective service areas."

The House Armed Services Committee, in its report—House Report 1890, 84th Congress, 2d session—stated that "only in the event that a carrier is unwilling or unable to furnish, required service within its service area shall another carrier be requested to provide such service."

Within recent months the Defense Department has again countenanced piracy of territory by large utilities. It awarded to an investor-owned electric utility a contract for electric service to Minuteman missiles within the territory of a rural electric cooperative. And it sought to obtain from the Bell system communications service for Autovon facilities within the territory of small investor-owned telephone companies and rural telephone cooperatives. The Bell system was asked to bid on service to Autovon sites not only within Bell territory but also in adjacent territory served by independents and cooperatives. The independents and cooperatives were asked to bid only on the sites within their service areas.

In the above instances, the electric utility was permitted by the Air Force to provide service within cooperative territory. In the other case, a number of conferences took place before the Defense Communications Agency recognized that little investor-owned utilities and rural electric cooperatives are entitled to provide service in their areas on the same basis that the large utility serves its territory.

Mr. President, in my opinion Congress intended, in approving Public Law 84–968, to assure that any supplier, big or little, investor-owned or customer owned, of electric or communications service to the Federal Government would have the right to do so within its service area. I believe that Congress intended the law to apply not only to the Sage system, but to the Minuteman, Autovon and subsequent systems. The amendment I propose would insure this.

Mr. President, although we are now coming to the close of the 89th Congress I am introducing the bill at this time so that interested agencies and organizations may review it and so that departmental reports can be prepared for the Armed Services Committee which will, I hope, be able to consider this bill early in the 90th Congress.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 3839) to amend the act entitled "An act to authorize the Secretary of the Air Force to establish land-based air warning and control installations for the national security, and for other purposes," approved March 30, 1949, in order to clarify the intent of Congress with respect to the procurement of communication and power services necessary to carry out the provisions of such act, introduced by Mr. METCALF, was received, read twice by its title, and referred to the Committee on Armed Services.

DESIGNATION OF OCTOBER 31 OF EACH YEAR AS NATIONAL UNICEF DAY—AMENDMENT

AMENDMENT NO. 930

Mr. DIRKSEN proposed an amendment to the joint resolution (S.J. Res. 144) to authorize the President to designate October 31 of each year as National UNICEF Day, which was ordered to be printed.

(See reference to the above amendment when proposed by Mr. DIRKSEN, which appears under a separate heading.)

ADDITIONAL COSPONSORS OF BILLS

Under authority of the orders of the Senate, as indicated below, the following names have been added as additional cosponsors for the following bills:

Authority of September 1, 1966:

S. 3794. A bill to amend the National Labor Relations Act to give employers and performers in the performing arts rights similar to those given by section 8(f) of such act to employers and employees in the construction industry: Mr. KENNEDY of New York, and Mr. NELSON.

Authority of September 6, 1966:

S. 3801. A bill to amend the Social Security Act to assist the States in conducting continuing programs of planning for the need for health-care facilities in the State and for assuring that certain amounts payable to health-care facilities pursuant to titles XVIII and XIX of such act will be expended in accordance with such programs: Mr. DOUGLAS, Mr. HARTKE, and Mr. KENNEDY of New York.

ADDITIONAL COSPONSORS OF BILLS AND RESOLUTION

Mr. PELL. Mr. President, at its next printing, I ask unanimous consent that the name of the Senator from North Dakota [Mr. BURDICK] be added as a cosponsor of the bill (S. 3777) to amend the Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that at the next printing of S. 3817, the football merger bill, the name of the senior Senator from Nebraska [Mr. HRUSKA] be added as a cosponsor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KUCHEL. Mr. President, I ask unanimous consent that at the next printing of S. 3823, to provide for the participation of the Department of the Interior in the construction and operation of a large prototype desalting plant, and for other purposes, the name of the distinguished junior Senator from Idaho [Mr. JORDAN] be added as a cosponsor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the name of the Senator from Wisconsin [Mr. NELSON] be added as a cosponsor of Senate Resolution 298, a bill to create a Select Committee on Technology and the Human Environment, at its next printing.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Interior and Insular Affairs and the Committee on Labor and Public Welfare be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana?

Mr. DIRKSEN. Mr. President, I have been asked to object.

The ACTING PRESIDENT pro tempore. Objection is noted.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session, to consider the nominations on the Executive Calendar, beginning with the Department of Defense.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE MESSAGES REFERRED

The ACTING PRESIDENT pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE REPORTS OF A COMMITTEE

The following favorable reports of nominations were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Patrick J. Foley, of Minnesota, to be U.S. attorney for the district of Minnesota.

By Mr. DIRKSEN, from the Committee on the Judiciary:

Henry S. Wise, of Illinois, to be U.S. district judge for the eastern district of Illinois; and

Alexander J. Napoli, of Illinois, to be U.S. district judge for the northern district of Illinois.

The ACTING PRESIDENT pro tempore. If there be no further reports of committees, the nominations will be stated.

DEPARTMENT OF DEFENSE

The Chief Clerk proceeded to read sundry nominations in the Department of Defense.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations in the Department of Defense be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations will be considered en bloc; and, without objection, they are confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE SESSION

On request of Mr. MANSFIELD, and by unanimous consent, the Senate resumed the consideration of legislative business.

CIVIL RIGHTS CLOTURE MOTION

Mr. BYRD of West Virginia. Mr. President, I urge the Senate to again firmly reject cloture on the motion to take up the so-called Civil Rights Act of 1966. A better name for the "open housing" section of this bill would be "forced housing," because, were it to become law, every property owner would be subjected to the threat of governmental compulsion to sell, rent, or lease to persons other than those of his own choice.

I am opposed to the iniquitous and odious philosophy which would deny one's right to freely choose his associates or his neighbors, his tenant or his lessee or his grantee, and this is the philosophy which underlies the housing provision. It is a masterpiece of proposed governmental invasion of property rights and Federal interference in private property transactions, and I am irreconcilably and unalterably opposed to such legislation, now or at any time in the future, regardless of its form and regardless of what administration or party may be the advocate and sponsor thereof.

A vote against cloture is, in reality, a vote against the "forced housing" section of the bill.

Mr. KENNEDY of Massachusetts. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. KENNEDY of Massachusetts. As I understand, there is a 3-minute limitation during the morning hour. Do I understand correctly?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. KENNEDY of Massachusetts. I ask unanimous consent that I may be permitted to proceed for 7 minutes.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Massachusetts? There being no objection, it is so ordered.

Mr. KENNEDY of Massachusetts. Mr. President, a majority of the Senate last Wednesday expressed its will by voting to take up this year's civil rights bill, to debate it, to work on it, and then to vote on its merits. But a sufficient minority voted in the negative to block the normal workings of the legislative process—to nullify the will of the majority and to negate the principle of majority rule which is so basic to our democratic system.

The denial of majority rule is always extraordinary. In this instance it is more so—because the minority is denying the majority even the opportunity to have the bill come before the Senate—and because of the nature of this legislation.

This legislation, which opponents of the bill claim is so ill considered as not to justify even placing it before the Senate, was the subject of a Presidential message. It was originally drafted by the Attorney General of the United States, worked on for months by committees of both the House and Senate, debated at great length and passed by a substantial majority in the House of Representatives, and supported by a substantial majority in the Senate of both the Subcommittee on Constitutional Rights and the full Judiciary Committee.

It is incredible to me that any legislation involving this kind of preparation and support could be called ill considered or that the judgments of our House colleagues and Senate committees could be given so little respect.

Later in the day, we will have another opportunity to vote on whether this bill should be considered by the Senate. I hope the vote will be favorable, so that the Senate can work its will. For that reason, as a member of the subcommittee which heard the voluminous testimony on this measure, and as one of the 10 Judiciary Committee members who filed the equivalent of a report in support of this proposal, I want to respond to some of the arguments which have been made and indicate why I believe this legislation should be permitted to come before the Senate for debate, and then enacted into law.

Those who oppose the bill argue that it is politically unwise at this time to support civil rights legislation. Civil rights, we are told, is not a popular issue this summer. There is a white backlash, which can be seen in last week's vote in the Maryland gubernatorial primary. Consequently, we are advised that the better part of political wisdom would be to ride with the popular tide.

At least, that is the argument offered at times during this debate by opponents of the bill. But at other times they have taken quite contrary positions. They have spoken of the great pressure which has been put upon them to support the bill—pressure which they are withstanding because, as they say, a matter of principle is involved. This ambivalence is, to say the least, confusing, and with all due respect, seems somewhat disingenuous. I do not think one can have it both ways. And the major thrust of the arguments is based on the existence of the white backlash.

But this is nothing more than a blatant appeal to political expediency. There may be a white backlash as a result of this summer's violence. I do not believe, however, that because a racist slogan helped attract 30 percent of the Maryland primary vote, this indicates that the majority of Americans no longer support the cause of civil rights and equal justice. In any case, whatever the climate of the moment, our responsibility as legislators is to look beyond, to the longrun needs of our society and to the dictates of our conscience.

If this legislation is wise and necessary, it is no less so because the activities of a few misguided militants have alienated some elements of the white community. The great majority of the Members of this body do not permit their vision of a just and equal society to become obscured by the turbulences of the moment. As a Democrat, it is, therefore, gratifying to me to observe that more Democrats in this Chamber voted for cloture last Wednesday than at the time of the 1964 Civil Rights Act, when the climate for civil rights was far more sympathetic.

I have also heard it argued that opposition to this bill has nothing to do with color or racial discrimination. The real issue we are told, is one of conduct. There has been rioting and violence this summer. The conduct of some Negroes has been bad. Therefore, we are told, there should be no civil rights legislation this session.

This is really a frightening argument. Look at it closely. Because the actions of some Negroes deserve condemnation, no further action should be taken to afford our Negro citizens the full rights of American citizenship. It does not matter if Negroes are excluded from State and Federal juries, if they are the victims of violent and brutal acts which go unpunished, if they are forced to live in racial isolation, cut off from the rest of our society.

It does not matter, some say, because the Negro is pushing too hard, he must be kept in his place—in his ghetto—apart from white Americans who are better behaved, and cleaner and more law abiding. We must not be in a hurry to afford

Negro Americans full participation in American life. After all, it is our society, not theirs.

I condemn the violence of this summer as strongly as anyone here, but I do not believe we should legislate out of resentment, or frustration, or anger. And I do not understand how one can justify focusing only on the bad conduct of a few Negroes as grounds for opposing this legislation.

What about the sickening conduct of those white adults who beat and bloodied Negro schoolchildren in Grenada, Miss., for trying to attend a desegregated school? What about the mobs of whites who screamed obscenities and hurled rocks and bottles at peaceful demonstrators in Chicago? And what of the exemplary conduct of those Negro Americans who are fighting and dying for this country and for freedom in Vietnam?

We must reject the idea of a racial stereotype. Each of us, white or black, should be judged as individuals, not on the basis of the color of our skins. That is all that the housing title of this bill involves. It does not prevent those in the real estate business from choosing not to deal with an individual because of what he is or does as an individual; it simply requires that the individual be dealt with on his merits, and not discriminated against simply because of his color.

It is argued that this requirement of nondiscrimination violates a basic principle of freedom, and intrudes upon the absolute right of a private property owner to dispose of his property in any way he sees fit. But title IV in its present form does not even cover the average homeowner. It applies only to real estate agents, and others in the residential housing business. Like any business, they are rightly subject to regulations in the public interest and are already subject to far more severe limitations on the use of property through zoning laws and health and safety measures. All title IV would add would be to prohibit discrimination in operating this business. It is in no way coercive. It in no way dictates to a person when or to whom he must sell or rent. Freedom of contract is preserved, provided that freedom is not exercised from a foundation of bigotry or discrimination.

And it is ridiculous to speak as if the requirements of title IV imposed a revolutionary step in the law of private property. Many States and cities, covering half our population, already have fair housing laws—many far stronger than those contained in the bill before us.

Finally, as the Supreme Court has observed:

> Neither property rights nor contract rights are absolute; for Government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work the harm. Equally fundamental with the private interest is that of the public to regulate it in the common interest. *Nebbia* v. *New York*, 291 U.S. 502, 523 (1934).

So the only real questions we should be asking about title IV are whether there is the national problem of housing discrimination justifying national legislation and whether there is a sound and constitutional basis for such legislative action.

If this bill is permitted to come before the Senate, its supporters are prepared to make their case on these questions, and make it, I think, to the satisfaction of the great majority of the Members.

The question of constitutionality was explored at great length in the subcommittee. The Attorney General made an excellent presentation on this question. The majority of the Judiciary Subcommittee and I believe a great majority of our most eminent constitutional lawyers, are satisfied that this legislation has a sound constitutional basis.

I believe the Federal Government has ample constitutional powers based on the commerce clause and the 13th and 14th amendments to act against discrimination in housing.

And in my judgment, we cannot afford not to act. Racial segregation in housing in America, fed by a system of discriminatory practices, is widespread and increasing. Largely as a result of it, the vicious cycle of racial poverty, unemployment, and inadequate educational opportunities work to perpetuate the slum ghetto. For as long as the Negro is isolated from other Americans and denied mobility and access to good housing, his children will go to segregated schools of inferior quality, he will pay more for inferior housing to which he does have access, and he will be cut off from the power structures of Government—unable to communicate or participate in the white society that surrounds him.

The country is dividing more and more into separate societies of the rich and poor, the white and the black, the complacent and the despairing, where the whites have jobs and the blacks have unemployment; where the whites live in suburbs and the Negroes in ghettoes.

We must act to correct this dangerous situation, not only because it is wrong in itself but because the division and social isolation breed contempt and distrust. The racial violence we are legislating against in title V, the discrimination in jury selection we are seeking to eliminate in titles I and II, the intimidation and coercion of those seeking to attend desegregated schools we are trying to prevent in title VI, all these things are a part of the whole fabric of discrimination and racial segregation.

And as long as the Negro is forced to live apart from the rest of the society, the contempt for the Negro as an individual and the contempt for his rights as an American citizen, which make this legislation necessary, will continue to plague our Nation.

I am not suggesting passage of this legislation by itself will eliminate the ghetto or racial segregation in housing. Of course it is not a panacea. But it is a first step to making possible exodus from the ghetto. It will represent a national commitment for equal treatment in housing and it will give the Negro American greater freedom and opportunity to live where he chooses.

The need for action in areas of jury reform and new Federal criminal legislation to deal with the problems of racial violence are equally clear. The testimony before our subcommittee and several court decisions indicate that the present system of selecting juries in the Federal courts often operates unfairly. Title I of this legislation seeks to provide, for the first time, uniform procedures for the selection of jurors in the Federal courts—procedures which will assure that jurors are drawn from a broad cross section of the community. Similarly, title II is designed to eliminate all forms of unconstitutional discrimination in the selection of jurors in State courts, while at the same time seeking to interfere as little as possible with traditional procedures.

Discrimination in jury selection is bad in several ways. It deprives a Negro defendant of a constitutionally fair trial. It may deny the victim of racial violence the equal protection of the laws by making it impossible to secure convictions even where warranted by the facts. And it serves to deny qualified Americans the right and the opportunity to participate in the operation of their government in one of the most significant ways open to the average private citizen.

There has been considerable work done on the technical details of these titles. Amendments in the House and here in the Senate have, in my judgment, met virtually all the objections raised to the procedural machinery contained in the original bill. Opponents of the bill propose still further amendments. But these amendments which deserve consideration and discussion, cannot be considered until this bill is permitted to be taken up by the Senate.

The need for title V is so apparent that it requires little elaboration. It suffices to say that recent Supreme Court decisions indicate there is now no Federal statute on the books which clearly prohibits, for example, a violent assault, by a private individual on a Negro child seeking to attend a desegregated school, or a Negro citizen seeking to use a public facility without discrimination on account of his race. Without enumerating here the many crimes perpetrated in the last few years against Negroes and civil rights workers which have gone unpunished, I need point only to the recent violence in Grenada, Miss., as proof of the need for legislation to correct this intolerable situation. Title V is needed to punish and deter acts of racial violence which, in part because of limitations and defects of present Federal law, and in part because of the failure to provide effective protection and prosecution at the local level, have too often gone unpunished and deterred the free exercise of Federal rights.

In my judgment, this legislation deserves the support of the Senate. I respect the right of those who feel otherwise and I will abide by the will of the majority. But a majority wants to take up and consider this legislation. They should be permitted to do so. The Senate must be permitted to work its will.

Mr. PROXMIRE. Mr. President, I am very happy that I was on the floor of the Senate when the junior Senator from Massachusetts [Mr. KENNEDY] delivered this concise and eloquent speech. The speech expresses my sentiments precisely and exactly.

I see no justification for refusing to give the majority of the Senate the opportunity to consider this bill, which is the only question that is before us for consideration in the vote on cloture.

INVESTMENT CREDIT SUSPENSION WOULD NOT STOP PRESENT INFLATION, MAY BRING ON LATER RECESSION

Mr. PROXMIRE. Mr. President, the evidence continues to build up that suspension of the investment credit and accelerated depreciation are the wrong weapons to meet the present inflationary and high interest rate problem.

The Secretary of the Treasury has established without any question that suspension of the investment credit will not have its prime effect for a year or so after its enactment.

And in appearing before the Ways and Means Committee last week, he disclosed that the administration knows nothing or will tell the Congress nothing about the kind of economic situation—whether booming and inflationary or receding and deflationary, that will confront the Nation when the suspension we are called upon to pass begins to take its big effect a year from now.

In response to questions from Representative TOM CURTIS asking for a specific forecast, the Secretary of the Treasury was only able to generalize his optimism with the guess that conditions may be on the expansionary side next year.

Mr. President, this estimate runs counter to the performance of leading indicators, most of which are turning down or leveling off. I do not mean the economy, but the leading indicators from the past point to a turndown later next year.

Certainly the Secretary of the Treasury recommending this serious action by the Congress should document his position with some specific estimates of the year-from-now level of industrial production, employment in the capital goods industry, level of business loans, and so forth, if the Congress is to have the raw materials on which to base a sensible judgment in this area which we must decide.

The Secretary has not done this. And as a matter of fact I am not sure he could. Of course, he could give the Congress some definite guesses in these areas but they would be only that—guesses.

The status of economic forecasting of conditions a year hence is just not that good. To predict specific economic conditions on September 19, 1967, would probably be little more reliable than to predict whether it will rain a year from now and what the high temperature for the day will be.

This is precisely why the suspension of the investment credit is exactly the wrong medicine. We just do not know whether a year from now we may be in a recession or a boom. So it is foolish to take fiscal action that will not have its effect until then.

Furthermore Mr. President the inflation problem is here and now. And there is a weapon available for meeting the here and now inflation problem. It is the prompt postponement of Federal public works of all kinds. This would have an immediate effect on the interest rate because Federal borrowing can be reduced at once. It can have an immediate effect on prices in the capital goods industry, as it slashes demand at once. Of course, we have precedents in World War II and the Korean war.

Furthermore the postponement can be lifted whenever the President thinks it should be.

The Washington Post of September 17, 1966, published an excellent editorial entitled "Fiscal Heat, Not Light." As the editorial points out:

> The Administration is asking for measures that will lower the level of investment in late 1967 or 1968 without really facing up to the question of whether restraints will then be needed.

The editorial proves its point chapter and verse by quoting from the Curtis-Fowler exchange before the Ways and Means Committee.

I ask unanimous consent to have printed in the RECORD the editorial which was published in the Washington Post of September 17, 1966.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

FISCAL HEAT, NOT LIGHT

With prodding from Chairman MILLS the House Ways and Means Committee, having completed three days of hearings, will soon report out a bill that would suspend the investment tax credit and the use of accelerated depreciation on commercial and industrial buildings. Passage through the House in record time will doubtless be saluted as another Administration victory. But a perusal of the proceedings before Ways and Means is not likely to dispel doubts concerning the wisdom of the Administration's fiscal policy. It is asking for measures that will lower the level of investment in late 1967 or 1968 without really facing up to the question of whether restraints will then be needed.

What was most disquieting about the hearings was the sorry intellectual performance of the Administration witnesses and their refusal, at almost every turn, to reveal to the Congressmen the specific, quantitative assumptions on which the fiscal requests are based. Consider the following colloquy between Treasury Secretary Henry H. Fowler and Representative THOMAS B. CURTIS of Missouri:

Representative CURTIS: The possibility exists that the United States will experience a sharp slowing growth, or even a recession next year, so . . . I assume that the Administration made a forecast on the over-all prospects of this nation which indicates a continuation of booming growth for next year. Now, is that the assumption the Administration has for the economic climate next year?

Secretary FOWLER. If you are asking if we made a quantitative forecast of the amount of GNP for next year, the answer is no, but we have made a qualitative judgment in the light of all we know. The prospects for a continued rate of growth—as substantial a rate of growth—are very, very, very great, and indeed the risk in terms of the amount of growth is that it will be more on the excessive side than the recessive side.

After eliciting other equally profound answers to his questions, Mr. CURTIS remarked that:

"I regret to say that we have to translate what you euphemistically call quantitative judgments, but the more I try to delve into them the more I come up with vague generalities."

The Administration made much of the point that it is difficult to forecast the future costs of the war in Vietnam. But no effort was made to appraise the economic impacts of the defense effort. In fact, Mr. Charles L. Schultze, Director of the Bureau of the Budget, muddied the waters instead of clearing them.

Mr. Schultze assured Representative JACKSON E. BETTS of Ohio that this newspaper had got its facts wrong when it argued, in its editorial of Sept. 12, that defense contract awards are leveling off. Mr. Schultze cited figures on total defense procurements which are rising steeply. But procurement includes wage and maintenance payments. Our purpose in calling attention to the behavior of prime contract awards was to suggest that defense pressures on productive facilities might abate in the near future. Prime defense contract awards increased by $13.8 billion in the second quarter of this year, up from $8.1 billion the first. Does Mr. Schultze believe that the swift pace will be sustained? If not, military requirements will have a smaller impact on an economy whose productive capacity is expanding at a rate of 7 per cent annually.

It may be that the Administration is right, that they have careful forecasts indicating that the economic expansion will proceed at a dangerously rapid rate next year and that a general increase in income taxes will be necessary to contain inflationary pressures. But if that is the case, two questions are in order. Why dampen the incentives to invest and expand capacity if what is needed is a general reduction in aggregative demand? And why not make the electorate privy to the secrets of those forecasts?

SCHOOL MILK PROGRAM ONE KEY TO HEALTH OF AGRICULTURE IN UNITED STATES

Mr. PROXMIRE. Mr. President, according to the recent study by the National Commission on Food Marketing into organization and competition in in the dairy industry, 13.6 percent of cash farm income comes from the sale of dairy products. Consequently, when we take a close look at the health of our farm economy we must look at the dairy picture with special interest. Unfortunately, at this time the picture is not good.

Despite a modest increase in dairy prices at retail outlets, thousands of dairy farmers have had to leave the land for other pursuits because of inadequate income from their dairy operations. This Government simply cannot afford to let such an exodus continue. Both Congress and the administration must take steps to push from dairy income to reasonable levels to avoid a severe dislocation not only of the dairy industry, but of the farm economy as a whole.

One answer is an increase in price supports. This is a step the administration took earlier in the year when it increased the support price to $4 per hundredweight. Further support price increases should most certainly receive careful consideration.

However, a second step is in the hands of Congress. We can take action before the 89th Congress ends to extend the school milk program and further increase appropriations for the program. Congress was more generous than in former years in providing $104 million

for the milk program for fiscal 1967. But more still is needed. I intend to offer an amendment to a supplemental appropriations bill before this Congress draws to a close to provide a further $6 million for the school milk program. This will keep the program in step with greatly increased program participation as well as the continuing growth in our school-age population.

The Senate now shoulders the burden and responsibility of extending the school milk program. The other body has acted. We can either acquiesce in that action or ask for a conference. Or we can kill the extension bill by inaction. In any event the decision is ours. We must move quickly if the program is to be extended before Congress adjourns.

CLOTURE: WHY?

Mr. ERVIN. Mr. President, for the second time in a week, the Senate is being asked to gag itself. I can only ask why: Why degrade the institution and its rules for the sake of politics—for the sake of proving to a minority in the country that a substantial minority of the Senate will defend the wishes of the majority of the country and the rights of all Americans?

I asked the reason for this farce before the cloture vote on Wednesday, and I have yet to receive an answer. In the brief period since that vote I have had an opportunity to deliver but one brief speech on the jury titles of the bill. I devoted considerable time and effort in that statement to show why the first two titles should not be called up.

Again, there was no answer.

Indeed, there has been almost nothing said by any of the proponents in defense of any of the provisions of the bill. None have told us why we should bypass the Judicial Conference and override the objections of the Federal judiciary on a measure peculiarly within their area of expertise; and none have attempted to explain the purpose, meaning, or syntax of title III.

To my knowledge about the only defense of any title has come from the bill's floor manager, the distinguished Senator from Michigan [Mr. HART], who has diligently sat throughout the debate while other proponents have been painfully conspicuous by their absence from the Senate Chamber. However, even the argument of the Senator from Michigan was largely irrelevant. He noted that the Constitutional Rights Subcommittee held exhaustive hearings on the administration's civil rights bill, much of the time devoted to the so-called open occupancy section. This is, of course, true. But he failed to mention that the bill which he has moved to call up, is different from that on which our hearings were held, and that not a single day of committee hearing has been given to this House-passed version.

Mr. President, no reason satisfactory to me has been given for this attempt to prevent the opposition from discussing why the bill should not be called up. I can only repeat what I said last week: This motion to gag an unborn, nonfilibuster is unconscionable; and it could establish a tragic precedent. Respect for the institution, respect for the spirit of the rules, and respect for the freedom those rules are meant to protect, demand that the resolution be rejected.

CLOTURE MOTION ON CIVIL RIGHTS

Mr. JAVITS. Mr. President, I wish to say a few words about the impending cloture vote and what it will mean to the situation in the Nation.

Naturally, the predictions on today's vote are not optimistic. The best information we have is that, again, the vote on cloture will fall short of the necessary two-thirds.

Mr. President, this is a very strong indictment of what a filibuster can do in this Chamber. The Senate cannot even take up and consider a bill.

Those who oppose amending rule XXII have insisted in recent years that, inasmuch as the Senate managed to take up and pass four civil rights bills, in recent years rule XXII has shown itself to be a fair rule. But, Mr. President, all that is crashing down upon the heads of those who swallowed that idea. Very likely, as a result of the vote today, I predict that come next January, the movement to amend rule XXII will begin again with real vigor and drive and be one of the key elements in the whole civil rights struggle.

Mr. President, I have said many times before that I think the President has made some serious mistakes in this matter. The 1966 Civil Rights Act was not sent to us early enough. It also contained the controversial section dealing with so-called open housing which had the strong opposition of the Senator from Illinois [Mr. DIRKSEN] who had, heretofore, been a friend of civil rights legislation and was one of the principal reasons why the comprehensive civil rights bill of 1964 was enacted into law.

I happen to think that the Senator from Illinois [Mr. DIRKSEN] is wrong about his opposition to the 1966 civil rights bill. I have said so many times. Seventeen distinguished lawyers agree with me today, in their survey of the constitutionality of title IV. But, whether I was right or wrong seems not to be material at this moment, in view of the indispensability of the Senator's support—which was not forthcoming—in the first instance because title IV was included in the bill. At least, for that reason, the President could, by executive order—as President Kennedy did—have done everything that title IV does, and more. Indeed, title IV is estimated to take care of 40 percent of housing. The conservative estimate indicates that a Presidential executive order could have taken care of 80 percent of housing. That would have relieved the bill of a load which it is, apparently, unable to carry in order to muster the necessary support in the Senate and to break a determined filibuster on the motion to take up.

Mr. President, the defeat of the opportunity to consider this bill shows, again, that the democratic process of constitutional government will be frustrated by a Senate rule which, in effect, amends the Constitution of the United States which gives each body the power to proceed by majority vote.

As I say, it will signal the opening of a fight to revise rule XXII, come next January.

There will be much tension and frustration created by the inability of this very reasonable civil rights bill to make any progress in the Senate after it was passed by the other body—a completely coordinate branch of Congress. This is serious business when a measure goes down the drain because it cannot even be considered in one of the Houses, after the other House has actually passed it, after long hearings, much consideration and much debate.

Though I shall not have been a party to the bill's frustration, I am a Senator and responsible—as are other Senators—for what happens in the United States. Instead of expressing resentment, or going into the deepest despair, I should like to make some suggestions now as to what might be done.

Mr. President, I suggest that the Nation needs to have, in the intervening period between now and next January when this civil rights struggle will reopen, the following four point program:

First. The President should sign an Executive order prohibiting discrimination in the sale or rental of all housing financed by federally insured banks and savings and loan associations.

The ACTING PRESIDENT pro tempore. The time of the Senator from New York has expired.

Mr. JAVITS. Mr. President, I ask unanimous consent to proceed for 3 additional minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, this one move would cover 80 percent of all housing in the United States and is a logical extension of President Kennedy's 1963 order covering VA and FHA financed new housing.

Second. A concerted effort should be made by the Office of Economic Opportunity and by private industry to concentrate on job training for Negroes—particularly teenagers. Lack of training and equal job opportunities have been factors, along with housing discrimination, in the destructive rioting and violence we have seen this summer and which have been so harmful to the legitimate cause of civil rights. These riots, in my judgment, will never be prevented by police force or by retaliatory inaction by Congress—which will probably be consummated today—but will only be eliminated when their root causes are removed.

It is neither wise nor prudent, Mr. President, for Congress to say "Well, if they want to riot, we are not going to do anything about it until they quit."

It is the mission of government not to have to rely upon policemen and the National Guard. It is the mission of government to do justice, and to try to alleviate the causes which make people riot, while at the same time sternly and rigorously putting down the riots.

Third. Existing civil rights laws should be enforced conscientiously and firmly, and sufficient appropriations should be made available for these activities. I have in mind not only the Justice Department, but also the Department of Health, Education, and Welfare—which has a considerable responsibility—the Equal Employment Opportunity Commission and the Civil Rights Commission. Let me say to these agencies, make no mistake about it: strict enforcement of these laws will be supported vigorously in Congress and laxity will be criticized and condemned, not condoned.

Fourth. The Community Relations Service should organize meetings in key tension areas between the Negro community and officials at all levels of government. The defeat of this measure could cause grave trouble and resentment in Negro communities across the country. Every effort should be made to reassure these citizens that the Federal Government has not turned its back on their petition for the redress of grievances. It should be explained that a majority of the Senate favored this bill. I think they will show again today that they favor it, and will fight again next year to secure its passage, and revise rule XXII so that we do not find ourselves in this situation again. Existing programs of both State and Federal Government—and many States have far more effective housing laws than this bill would have provided including my own State of New York, should be publicized, and assistance given to those who have such laws available. State human relations commissions and the private National Committee Against Discrimination in Housing should take a particularly active role in this area.

The ACTING PRESIDENT pro tempore. The time of the Senator from New York has expired.

Mr. JAVITS. Mr. President, I ask unanimous consent to proceed for 1 additional minute.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, we have much to do between now and January, and more when Congress reconvenes. My hope is that the country can withstand the delay, and that the proposed efforts will not come too late.

As everyone knows, we are facing not just a single incident or a series of incidents, but we are facing a fundamental revolution. The Negro community in this country—and a majority of the white community—believe strongly that the social injustices and the deprivations of centuries shall be overcome in the current decade.

Thus, Mr. President, the civil rights advocates may have lost a battle in the Senate—I am afraid we will today—but I am deeply determined, with all of us, that we shall win the war to assert justice, and preserve the guarantees of the Constitution of the United States for every citizen of the United States whatever may be his color, his religion, or ethnic origin.

THIS IS A NATIONAL SCANDAL AND SHAME

Mr. YOUNG of Ohio. Mr. President, the constant rise in the cost of living and of interest rates is bringing hardship and discouragement to millions of Americans.

Businessmen who are engaged in what is termed "small business" are finding it increasingly difficult to borrow money that they vitally need for the normal week-to-week operation of their enterprises. Not only are they faced with exorbitantly high interest rates—7 percent and more is not at all unusual—but they are finding that even if they agree to pay skyrocketing interest rates they are frequently unable to obtain loans which were available 6 months ago.

For consumers—which means all Americans—the cost of purchasing homes, automobiles, home appliances, and all other consumer goods has risen sharply.

Perhaps the most hard hit industry is the homebuilding industry. New housing starts are at their lowest level in 6 years. Last year during the peak months of the building season, mortgage loans ran approximately $2 billion per month; for the current year they will run but slightly above $1 billion per month. As a result, young American couples starting out in life and desiring to rear their children in decent neighborhoods and in homes of their own are finding it increasingly difficult to do so.

Indeed, when people must pay an average of 6½ percent interest for a mortgage, house hunters and homebuilders are all prejudiced. With a 1-percent rise in interest charges, a family buying a $20,000 home under a 30-year mortgage pays over the period of the mortgage $4,700 in additional interest.

Mr. President, higher interest rates are an added burden at all levels of government—Federal, State, and local. Furthermore, they eventually end up as a further tax and hardship on the consuming public and families of moderate incomes. They only benefit the privileged few.

In 1960 American consumers paid out $7,300,000,000 in interest. In 1965, this figure rose to $11,100,000,000. Interest rates have risen so sharply this year that for the second quarter of 1966 interest payments by consumers are running at an annual rate of $12,500,000,000.

This is money out of the pockets of the average American workingman and workingwoman who, unable to pay out the requisite total cost and who needs an automobile, must buy this automobile on the installment plan, and for wives who must purchase washing machines and other necessary household appliances on time payments.

Consumers have a right to look to their government for protection from unconscionable interest rates. The Federal Government has the power over money and credit which should be used for the benefit of all the people.

Mr. President, in 1951, when the pressures of the Korean war began to be felt throughout the economy, the consumer price index rose by 6.7 points. President Harry S. Truman took action to protect the public from profiteering and maintained a reasonable interest rate structure throughout the Korean war. He refused to permit greatly increased interest rates which would have been an imposition of an additional nonproductive tax burden on the public.

It is noteworthy that former President Truman recently considered it necessary to make a rare public statement expressing his alarm at rising interest rates and warning that this could lead to "a serious depression." We would do well to heed this advice by one of the greatest Americans of all time.

The miserable war in Vietnam has now reached the proportions of the Korean conflict. More and more men of our Armed Forces are serving overseas in southeast Asia and the total of our men committed to combat and the loss of lives of these fine young men will soon exceed that of the Korean conflict. Action is needed both by the President and the Congress to stem inflationary pressures and to prevent a further increase in the cost of living and in interest rates which are now the highest that they have been in 45 years—the highest since the administration of President Warren G. Harding.

Mr. President, all Americans were greatly encouraged by President Johnson's recent announcement of proposed action to help stabilize the economy. I intend to support his recommendations for a temporary repeal of the 7-percent investment tax credit and for a suspension of the accelerated depreciation of buildings and other structures. I am hopeful that the President will use all the powers at his command to implement his request of the Federal Reserve Board and of our large commercial banks to lower interest rates and to ease the inequitable burden of tight money. If legislation in that regard is needed, then strong recommendations to the Congress are in order.

The big bankers and those with great accumulated or inherited wealth are the only ones who benefit from high interest rates. The public is becoming more and more aware of the real situation. The Chairman and members of the Federal Reserve Board are always claiming that they are combating inflation by raising interest rates. The fact is that this results in higher prices, not lower ones. The bankers benefit. Average Americans suffer.

Mr. President, I am hopeful that before Congress adjourns we will have taken forthright action, in cooperation with the President, to bring down the high interest rates which prevail and to curb the high cost of living. The failure to stem the threat of inflation which hangs like a specter over the land would be a tragedy of the highest magnitude.

THE FDA FIDDLES WHILE THE WORLD STARVES

Mr. BARTLETT. Mr. President, I am sure that most of us are familiar with

the legend about Nero fiddling while Rome burned.

The legend is told to illustrate monumental indifference.

Mr. President, today the world faces a potential tragedy which, if not checked, will dwarf for all time the conflagration which consumed the great city of Rome. Indeed, if the problem is not solved, there will be no Romes, no Londons, no Washingtons for most of the people of the world—only starvation and malnutrition.

The most tragic aspect about the ever-growing problem of world hunger is that man, if he but uses it, possesses enough knowledge to alleviate if not to eliminate the hunger pangs which rob so many millions of persons of the opportunity to pursue life, liberty, and happiness.

I do not set myself up as an authority on this subject, but I will take the word of J. George Harrar, president of the Rockefeller Foundation, who was recently quoted as saying:

> We know enough today to transform the food production of the world. There is no longer any excuse for human starvation.

Mr. President, I do not know if Mr. Harrar included the development of fish protein concentrate in the pool of knowledge which can transform food production, but he could have done so.

The potential value of fish protein concentrate in the war against world hunger and malnutrition has been outlined on this floor by myself and other Senators time and again. The senior Senator from Illinois [Mr. DOUGLAS] has been in the forefront of those seeking authority to use this effective weapon in what may be the most important war in history.

The senior Senator from Washington [Mr. MAGNUSON] and I worked to secure appropriations for the Bureau of Commercial Fisheries to carry out a fish protein concentrate research and development program. The Senate has passed my bill authorizing construction of pilot manufacturing plants, the next step needed in the development of the concentrate.

However, Mr. President, one key action has not yet been taken.

The Food and Drug Administration has fiddled while the world starves.

Time and again the FDA has delayed or turned up some new reason why fish protein concentrate should not be approved as wholesome and safe for human consumption.

I do not know if the FDA's fiddling indicates indifference or deference to certain groups, but I do know the distinction is of no consequence to the billions of persons who could benefit from production of this product.

We who have pressed the FDA for the necessary approval are not pushing an untested product. On the contrary, since 1963 the Advisory Committee on Marine Protein Resource Development of the National Academy of Sciences has watched closely the development of fish protein concentrate by the Bureau of Commercial Fisheries.

One year ago next month the committee declared the product produced by the Bureau of Commercial Fisheries to be "wholesome and safe for human consumption, highly nutritious, and suitable at present for commercial production, distribution, and use in human nutrition."

In February the National Academy of Sciences emphasized its confidence in fish protein concentrate by adopting a resolution urging construction of a pilot plant to manufacture the product.

The same month the Secretary of the Interior petitioned the Food and Drug Administration asking the product be approved as a food additive.

Once again the FDA fiddled. It took a while, but the FDA finally came up with a new objection. The FDA asked for further research on the possibility of fluorides in the product mottling teeth if the concentrate were consumed in large quantities.

It seems that rather than picking at a fiddle as Nero did while Rome burned, the FDA is reduced to the more unsightly pastime of teeth picking while the world starves.

Mr. President, I am confident that any parent faced with a decision between using a food additive which could prevent the many illnesses associated with malnutrition and which might mottle the child's teeth would not hesitate a moment to use the additive. The fact that the FDA thinks such a decision worthy of discussion indicates a Nero-like indifference to the suffering of the world or a monumental deference to some bureaucratic prejudice.

In addition, I have been told by knowledgeable persons that there is little or no chance that the use of the concentrate as a food additive will cause mottling.

Perhaps there is a silver lining in this latest action by FDA. In being reduced to teeth picking it appears as if the FDA is running out of ideas on what next to find wrong with the product.

I hope the FDA is out of ideas, for the hour is late, and the world starves while the FDA fiddles.

Mr. President, an editorial dealing with this subject appeared in the September 14 edition of the Washington Post. I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

PROTEIN FOR THE HUNGRY

The extraordinarily long time the Food and Drug Administration is taking to certify the new high-protein fish flour concentrate stands in curious contrast to the FDA's past haste in approving oral contraceptives, antibiotics as food preservatives and certain other drugs. No one can want the FDA to lower its standards or to approve the new fish flour developed by the Department of the Interior if there are real doubts about its safety. But the doubts seem to be concerned, not with basic safety, but with the possible effect of fluorides in mottling teeth if the flour is consumed in large quantities. This is a problem already encountered in the fluoridation of water supplies; in some places natural fluorides in water produce the same effect. If possible mottling is the only reason for withholding approval of the flour, it seems insufficient reason to delay a product that promises to make available a better diet for millions of undernourished people around the world for only a few cents a day.

THE METAL AND NONMETALLIC MINE SAFETY ACT

Mr. JAVITS. Mr. President, with the signing by the President of H.R. 8989, the Metal and Nonmetallic Mine Safety Act, we have the culmination of what I consider to be the best in the legislative process. The regulation of safety practices in the Nation's mines is, in principle, almost a universally recognized objective, but the precise techniques of such regulation—the standards, the procedural safeguards, and the jurdisdictional lines—are sometimes extremely controversial. Thus, we had to place great reliance on the experts—the representatives of the labor organizations, the mine operators and the Federal and State regulatory officials who were most familiar with the field.

So I think it is important, Mr. President, to take note of those experts who were so helpful in the formulation of this legislation. The representatives of organized labor, including the United Steelworkers of America, the International Union of Mines, Mill and Smelter Workers, the International Brotherhood of Teamsters, District 50 of the United Mine Workers of America, and the International Brotherhood of Electrical Workers were of great help. Alexander K. Christie, legislative representative of the Steelworkers Union, was of outstanding help in presenting labor's point of view and translating it into specific legislative provisions. Although I could not always agree with him on certain aspects of the bill—particularly certain provisions dealing with State enforcement—he was most helpful in reconciling opposing contentions with respect to other provisions, and the bill's provision for safety standards, particularly the section giving finality to standards recommended by a mine safety advisory committee, bears his stamp.

On the management side, the representatives of the National Crushed Stone Association, the American Mining Congress, and the National Sand & Gravel Association, as well as other trade associations and individual mining operators, were of great assistance in their understanding of this complex field. Of great assistance was Charles L. Bucy, counsel for the National Crushed Stone Association, who on several occasions helped formulate compromise legislative language which proved so useful in avoiding an impasse, and generally in "tightening up" this legislation.

Finally, the representatives of the Federal and State regulatory agencies, particularly James Westfield, Assistant Director of Health and Safety of the U.S. Bureau of Mines, and representatives of various State agencies, like Jerome Lefkowitz, deputy industrial commissioner of the State of New York, helped greatly in improving this legislation.

Mr. President, there is hardly a line in this bill which did not undergo some change in the course of its consideration in the Senate. I sponsored some

eight amendments which appear in the act as passed, and I think it fair to say that these amendments, as well as those proposed by other Senators, more often than not had substantial support from both labor and management—which, I think, is a real tribute to the spirit of cooperation which existed in the work on this important bill.

A NUCLEAR NONPROLIFERATION TREATY

Mr. GORE. Mr. President, there is widespread concern over the inability of the United States and the Soviet Union to agree on a nonproliferation treaty. In my own view, both of the draft treaties discussed at Geneva are notable largely because of their lack of realism. Nonetheless, Mr. President, I believe there is hope if the United States and the Soviet Union were to clarify their purposes and policies with regard to the nonproliferation treaty.

In the search for a means of breaking the present impasse we need the thoughts and suggestions of all interested parties. One such analysis was authored by the distinguished editor of the Saturday Review, *Mr. Norman* Cousins. I ask unanimous consent that this thoughtful article "The President and the Arms Race" be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE PRESIDENT AND THE ARMS RACE

For almost nine months, delegates from eighteen nations met in Geneva under the auspices of the United Nations to try to find a way of giving reality to a proposition that all believed to be essential. The proposition was that the spread of nuclear weapons must be stopped. Yet the common purpose that brought these delegates together was not accomplished. They adjourned last week without the agreement that all had declared to be in their own stark self-interest.

One of the difficulties was that the nations with a potential nuclear capacity did not think it fair to be asked to forego making nuclear weapons unless the nations already making them would agree to stop doing so and would start to cut back.

This particular problem, however, was not the major sticking point at Geneva. The major sticking point was that the United States and the Soviet Union were deadlocked on the question of West Germany. The United States insisted that any treaty limiting the spread of nuclear weapons had to take into account existing U.S. commitments to its military alliances. The USSR interpreted this position to mean that the U.S. wanted a non-proliferation treaty that would make an exception for Germany.

As the Geneva deadlock continued month after month, the terrifying possibility of a world nuclear arms race became increasingly close. Finally, a possbile compromise was advanced—not in the Palais des Nations at Geneva but in the United States. Secretary of Defense Robert S. McNamara acknowledged, tacitly at least, that the concern over West Germany's access to nuclear force had to be met. He proposed a consultation procedure inside NATO which would give West Germany a voice in nuclear decisions but which would keep nuclear weapons out of German hands.

Many of the delegates at Geneva were encouraged by this proposal. They felt it represented a good test of Soviet sincerity; if the Russians really wanted to stop nuclear diffusion in the world, the McNamara formula offered a reasonable and workable way of getting on with the job.

But the Soviet position was never put to the test. Incredibly and inexplicably, the United States made no attempt at Geneva to put forward the McNamara compromise proposal. An apparent division among U.S. policy-makers had come to the surface. Confronted with an opportunity to break the deadlock, the United States backed away. The Geneva conference ended without the agreement that all agreed was imperative.

Why? Why did the United States shun the formula on West Germany that might have produced a treaty? A possible clue came last week when a U.S. State Department disarmament consultant, on a television program, asserted that the State Department didn't go along with the McNamara proposal because it would encourage the Russians to believe that they could vibrate American policy and impair our freedom of decision. That is, we should not give weight to Russian objections just to obtain agreement. With equal emphasis, he declared that the McNamara formula would offend West Germany.

The same day this interpretation of U.S. policy was being advanced, President Lyndon B. Johnson, speaking at Idaho Falls, made an eloquent and striking plea to the world's nations to stop the spread of nuclear weapons. He called on statesmen to rise above narrow, irrational approaches to world problems. He defined a larger interest than the old and cramped national ones. He urged the Soviet Union in particular to put aside the "dogmas and the vocabularies of the Cold War."

"While differing principles and differing values may always divide us," the President said, referring to the United States and the Soviet Union, "they must not deter us from rational acts of common endeavor."

The juxtaposition of the record at the Geneva Conference with the remarks of the State Department consultant and the President's talk at Idaho Falls raises somber and disquieting questions. Is the consultant's interpretation correct? For if it is, then the nation is faced with something far more serious than the matter of tactics in negotiating wtih the Soviet Union; it is faced with an issue bearing on the integrity of the Presidency. Nothing could undermine the President's position more than a situation in which he calls upon other nations to take action which the United States has actually rejected for itself in advance. Cynicism is not among the values that give distinction to American history.

The first essential both of policy at home and policy abroad is the total credibility of the President. Nothing could be more vital in the present situation than for the President himself to dispel any doubts that may have been raised by the record at Geneva or by official or semi-official spokesmen. The President can best do this by taking part in the effort to obtain vital agreement in the field of arms control, whether with respect to non-proliferation of nuclear weapons or a comprehensive ban on nuclear testing. He can eliminate existing confusion by putting into action the policies he has declared to be essential. If the McNamara proposal has virtue as a means of breaking the deadlock, he should say so.

Recent history has demonstrated it is only when the President himself takes direct part in negotiations that important breakthroughs and results are likely to be achieved. What happens otherwise is that the President's own announced purposes stand in danger of being nibbled to death by naysayers and cramped strategists in the operational branches.

The needs described by the President at Idaho Falls are the dominant needs affecting the safety and security of the American people. If we are to make substantial progress in meeting these needs, the President's role must be decisive.

ABOLITION OF CAPITAL PUNISHMENT—S. 3646

Mr. HART. Mr. President, on July 25 together with nine other Members of the Senate, I introduced S. 3646, a bill to abolish the death penalties under Federal law.

Since that time I have received many comments on the bill and have been pleased with the apparent widespread support for such a reform of our Federal laws. It is my hope that within the 90th Congress, which will convene next January, it will be possible for the Senate Judiciary Committee to undertake comprehensive hearings and study of this bill which we will reintroduce.

Recently there came to my attention a copy of the newsletter of September 1966 published by the Friends Committee on Legislation of California on the subject of capital punishment.

I ask unanimous consent that the text of this excellent statement of the need to abolish capital punishment be printed at this point in my remarks.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

CAPITAL PUNISHMENT—RELIC OF THE PAST

". . . His first childhood memories were those of hunger and of continual arguments . . . Johnny's school attendance permanently ended somewhere during the middle of the eighth grade . . . At age seventeen he left home . . . He arrived in California a few days after his nineteenth birthday . . . Frustrated and unable to find work, Johnny embarked upon a one-man burglary career in order to support himself and his wife . . . Less than four months following the marriage he was apprehended . . . While in County Jail, Johnny Cain learned no trade other than how to sweep a jail corridor . . . He tried to find work once more, but the employment market was glutted with casual, unskilled labor . . . Inevitably he turned back to crime . . . Johnny was sentenced to five years in the State Penitentiary . . . Without skills, his parole officer was unable to find employment for him . . . The years passed, each one as aimless and as fruitless as the last . . . At thirty-two he found himself in Southern California. He was broke, hungry, tired . . . The thing to do, he thought, would be to pull a robbery . . . He found the gas station and cruised past several times . . . The attendant was inside the small office . . . Johnny walked up to the door . . . The attendant got to his feet, reached for a tire iron, and raised it over his head . . . The gun went off in his hand . . . The police apprehended Johnny Cain three days later . . . The Court, after deliberation sentenced Johnny Cain to death, commenting that crimes of this nature must be deterred . . . There was no executive clemency—no stay of execution—for Johnny Cain." ("The Johnny Cain Story," Issues in Criminology, Vol. 1, Fall 1965.)

Johnny Cain never existed as a real person, but parts of him can be found in the lives of 187 of the 194 men and women executed in California since 1938. Robert M. Carter, Research Specialist in Criminology at the University of California, who tells his story, remarks that "he represents an average nothing more or less." But in truth, he represents much more. In the life of Johnny Cain, the hardships, missed opportunities, frustrations,

and fears of every man who makes the long journey from crime to Death Row to the gas chamber comes to light.

Some sixty Johnny Cains now await execution in California. Numerous court decisions over the past three and a half years have delayed executions and, as a consequence, filled Death Row to over-flowing. With no immediate hope of relief from the steady stream of death sentences, and with executions held in abeyance by court appeals, the Department of Corrections has been forced to build an annex to Death Row.

Although thirteen states, including New York, have abolished the death penalty, California—the most advanced state in the correctional field—retains it. In the three years preceding the last execution (Jan. 23, 1963), California with 28 executions had more than any other state; only Texas with 20 came close. Nationally, the percentage of people in favor of capital punishment declined from 51% to 45% from 1960 to 1965, but in California the drop was only from 55% to 51%. The latest nationwide Gallup Poll shows that for the first time in history more Americans oppose the death penalty (47%) than favor it (42%). (S.F. Chron. 7/6/66.)

The last two years have witnessed progressive action against the death penalty in other parts of the nation. Oregon abolished capital punishment in late 1964. By mid-1965, four more states stood in the abolition ranks: West Virginia, Vermont, Iowa, and New York. In July 1965, the United States Department of Justice formally declared its opposition to the death penalty in these words: "Modern penology with its correctional and rehabilitation skills affords far greater benefits to society than the death penalty which is inconsistent with its goals."

Over the years countless persons have contributed to the case against capital punishment. If we could bring some of them together to answer our questions about the death penalty, excerpts from a transcript of such an open forum might read as follows:

What is it like to be a condemned man waiting on Death Row?

. . . Dan Roberts (Death Row inmate, San Quentin): "It's like death itself. Death is all you think about. Every man up there is emotionally ill. Life and death is on your mind constantly. And as the death date approaches, it's common for a man to be scared to death." (Oakland Tribune, 6/5/66)

Governor Brown, as a man who once advocated the death penalty, why do you now think it should be abolished?

. . . Governor Edmund G. Brown: "I oppose capital punishment because it is more vengeful than punitive; because it is more an act of hate than of justice. We kill the murdered because we fear him, not because he is beyond rehabilitation or control. We kill him not for his crime but in the blind hope that others may not commit his crime." (Statement on Capital Punishment, 1/31/63)

But isn't the death penalty a deterrent to crimes of murder?

. . . Governor Edmund G. Brown: "Punishment is a deterrent to crime only if it is swift and certain. But of all major crimes, the punishment for homicide is most subject to the law's delay and to the inconsistencies of our courts." (op. cit.)

. . . Dr. Thorsten Sellin (Criminologist, Univ. of Pa.): "Within each group of states having similar social and economic conditions and populations, it is impossible to distinguish the abolition states from the others . . . The trends of the homicide rates of comparable states, with or without the death penalty, are similar . . . Anyone who carefully examines the data is bound to arrive at the conclusion that the death penalty, as we use it, exercises no influence on the extent or fluctuating rates of capital crimes. It has failed as a deterrent." (The Death Penalty, 1959)

Dr. Sellin, police feel that the death penalty protects them in their dangerous work. Can this be proven?

. . . Dr. Thorsten Sellin: "It is obvious from an inspection of the data that it is impossible to conclude that the states which had no death penalty had thereby made the policemen's lot more hazardous. It is obvious that the same differences observable in the general homicide rates of the various states were reflected in the rate of police killings." (op. cit.)

Is the death penalty applied to some groups in society more than others?

. . . Jack Johnson (Warden, Cook County Jail, Chicago): "Look at the people who were put to death in the U.S. last year and you will see that all of them were represented by court appointed attorneys . . . If there is enough money behind you, you can usually avoid the chair." (Newsweek, 3/8/65)

. . . Sara R. Ehrmann (Exec. Dir., Amer. League to Abolish Capital Punishment): "It is difficult to find cases where persons of means or social position have been executed." (Federal Probation, Mar. 1962)

. . . Governor Edmund G. Brown: "As for the poor of all races, it is clear we execute them in disproportionate numbers because they lack the resources to retain the most skillful counsel or to press their cases to the ultimate." (op. cit.)

Do members of minority groups get executed more frequently than other people?

. . . Jack Greenberg (Director-Counsel, NAACP Legal Defense Fund). "The entire history of capital punishment is one which hits with unusual severity at Negroes. (Sacramento Bee 4/24/66)

. . . Sara R. Ehrmann: " . . . most of the defendants sentenced to die and those executed are from minority racial groups, especially Negroes . . . During the years 1930 to 1959, a total of 3,666 prisoners were put to death. Of these, 1,972 were Negroes, 1,653 were white and 41 were from other groups." (op. cit.)

Don't the courts do all they can to assure equal treatment of condemned men?

. . . Dr. Hugo Adam Bedau (Author of The Death Penalty in America, 1964): "The whole pattern of treatment of capital convictions by the higher courts seem devoid of rhyme or reason. Thus a man proven guilty is saved from execution by the striking ingenuity of his counsel on appeal to the Supreme Court . . . But another man goes to death purely because his attorney neglected to raise a point of procedure at the trial, thereby barring the higher courts from touching the issue . . . One man is literally taken from the electric chair, after his counsel had the good luck to find a Supreme Court Justice who would issue a temporary stay of execution; upon rehearing the conviction was reversed . . . But another man is executed because the notice of stay of execution arrived seconds too late to halt the flow of lethal gas into the execution chamber . . . " (The Death Penalty in America)

Wouldn't it be a great financial burden on the state to keep murderers in prison for life?

. . . Richard A. McGee: "The actual costs of execution, the cost of operating the supermaximum security condemned unit, the years spent by some inmates in condemned status, and a pro-rata share of top level prison officials' time spent in administering the unit add up to a cost substantially greater than the cost to retain them in prison the rest of their lives." (Federal Probation Vol. XXVIII, June 1964)

Abolitionists worry a great deal about executing an innocent man, but are there any documented cases of this happening?

. . . Dr. Hugo Adam Bedau: "I have abstracted seventy-four cases occuring in the United States since 1893, in which a wrongful conviction of criminal homicide has been alleged and in most cases, proved beyond doubt . . . eight probably erroneous executions and an additional twenty-three erroneous death sentences have been discovered." (op. cit.)

But Dr. Bedau, why don't the state or federal appellate courts prevent these miscarriages of justice?

. . . Dr. Hugo Adam Bedau: "The main reason is that the scope of review of a criminal conviction, even where a death sentence is involved, is exceedingly narrow in almost all American jurisdictions . . . Never is the substantial issue of the convicted man's guilt or innocence squarely before the appellate court." (op. cit.)

Can convicted murderers be safely paroled?

A. LaMont Smith (Criminologist, Univ. of Calif.): "On January 1, 1945, there were 398 men on parole in California who had committed murder. In the following period 1945 to 1958, an additional 522 were placed under lifetime parole supervision for a total of 920. In this fifteen year period only one man was returned to prison with the death penalty or one-tenth of one percent of the total." (Statement to the Calif. Assem. Comm. on Crim. Proced., 4/10/61)

Is the death penalty in keeping with this country's constitution?

. . . Geral Gottlieb (ACLU Counsel): "The sentence of death violates the Eighth Amendment of the United States Constitution, and Article I, Section 6 of the California Constitution because the sentence and its execution are repugnant to the evolving standards of decency that mark the progress of our maturing society." (ACLU Open Forum, Feb. 1966)

These excerpts from history's open forum on the death penalty obviously only skim the surface of the great body of evidence against capital punishment. Cesare Beccaria, an eighteenth century Italian criminologist, summed it up when he said: "The punishment of death is pernicious to society from the example of barbarity it affords. Laws which are intended to moderate the ferocity of mankind, should not stimulate it by examples of barbarity." The question of retaining capital punishment in California will be considered by the reapportioned 1967 Legislature. We urge every concerned Californian to speak out during the coming months for abolition.

BUILDING CODE REFORM

Mr. MUSKIE. Mr. President, I am pleased to announce that two of the major organizations in the Nation representing local government officials have adopted resolutions calling for remedial action by all three levels of government in modernizing and updating building codes, encouraging uniformity, and improving the quality of administration. The U.S. Conference of Mayors urged governmental action for building code reform at its annual meeting in Dallas, Tex., on June 15, 1966. The National Association of Counties, at its annual meeting in New Orleans, July 20, 1966, adopted a policy statement concerning building code reform which is now a part of the American county platform. These resolutions call for action by the Federal, State, and local governments to carry out the recommendations made in the just-issued report of the Advisory Commission on Intergovernmental Relations entitled "Building Codes: A Program for Intergovernmental Reform." Copies of this Commission report and of model State bills designed to carry out many of these recommendations are

available, upon request, from the Commission here in Washington.

I commend the U.S. Conference of Mayors and the National Association of Counties for their interest in working toward solutions of the many problems in this difficult field. I also wish to commend the staff of the Advisory Commission which prepared the report and background materials for the Commission's recommendations. As always, it has done a thorough and competent job and deserves special recognition for its efforts. I ask unanimous consent that the text of these resolutions be printed in the RECORD.

There being no objection, the text of the resolutions was ordered to be printed in the RECORD, as follows:

BUILDING CODE REFORM

(Resolution adopted at the annual meeting of the U.S. Conference of Mayors, Dallas, Tex., June 15, 1966)

Whereas, obsolete building code requirements and a wide diversity of provisions among local jurisdictions unnecessarily add to the cost of housing in the nation's cities; and

Whereas, approval procedures for new building materials and systems by a myriad of public and private groups have made the introduction of new products difficult; and

Whereas, intergovernmental problems of code uniformity are greatest in metropolitan areas where builders must contend with a great many different building codes; and

Whereas, although the federal government is involved in direct construction, research, and housing guarantees, it has followed no consistent path toward modernization and uniformity of codes; and

Whereas, remedial action is needed by federal, state and local governments to accelerate the modernization and updating of building codes, encourage uniformity, and improve the quality of administration at the local level: Now, therefore, be it

Resolved by the U.S. Conference of Mayors, That the federal government is urged to authorize and finance the development of national performance criteria and standards, a continuing program of building construction research and development of an advisory national model building code considering local application; be it further

Resolved, That state governments are called on to formulate model state building codes with products approval procedures for permissive adoption by local governments and to improve the efficiency and technical competence of local building code administration by establishing professional qualifications, licensing, and training programs for building inspectors.

BUILDING CODE REFORM

(American county platform, official policy statement of the National Association of Counties, approved July 20, 1966)

Obsolete code requirements and excessive diversity of building codes among local jurisdictions unnecessarily add to the cost of housing, particularly in metropolitan areas where builders must contend with a great many different building codes. In addition, the requirement for approval of new building materials and systems by a myriad of public and private groups has made the introduction of new products difficult. Remedial action clearly is needed by Federal, State, and local governments to accelerate modernization and updating of building codes, encourage uniformity, and improve the quality of administration at the local level.

NACO urges the Federal Government to authorize the financing of (a) the development of national performance criteria and standards for building materials, (b) an expanded program of building construction research, and (c) the preparation of an advisory national model building code. We further urge State governments to (a) prepare and issue model State building codes, including a products approval procedure, for permissive adoption by local governments, and (b) improve the efficiency and technical competence of local building code administration by establishing professional qualifications, licensing, and training programs for building inspectors.

THE FOREIGN ASSISTANCE ACT STRENGTHENS HEMISPHERIC DEVELOPMENT

Mr. FULBRIGHT. Mr. President, Dr. Carlos Sanz de Santamaria, Chairman of the Inter-American Committee on the Alliance for Progress, has indicated his strong support for the provisions of the recently enacted foreign assistance legislation which requires that development loans be made in accordance with the recommendations of the CIAP, the Alliance's coordinating mechanism. I think that Dr. Sanz de Santamaria's observations will be of interest to all Members of Congress and I ask unanimous consent to have printed in the RECORD at this point the complete text of the statement.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

NEW FOREIGN ASSISTANCE ACT STRENGTHENS HEMISPHERIC DEVELOPMENT, SAYS ALLIANCE CHIEF

WASHINGTON, September 8, 1966.—The Foreign Assistance Act just approved by the U.S. Congress strengthens the multilateral character of the Alliance for Progress and will help Latin American governments to carry on more rational development planning, Dr. Carlos Sanz de Santamaría said today.

Dr. Sanz de Santamaría, Chairman of the Inter-American Committee on the Alliance for Progress (CIAP), said in a statement:

"We are encouraged by the strong bipartisan support and the constructive action of the U.S. Congress in the Foreign Assistance Act which governs U.S. assistance under the Alliance for Progress.

"By authorizing development lending over three years, the Act will make it possible for Latin American governments to carry on more rational development planning.

"It is also encouraging to see an increase in Alliance funds over the level of previous years, that the interest rate on development loans remains at 2½ per cent, and that the Inter-American Development Bank can receive additional funds for the purposes which the Bank has so successfully aided such as regional economic integration and social development.

"In keeping with the spirit of the Alliance Charter, the Act strengthens the multilateral character of the hemispheric development effort. It provides that U.S. development loans to Alliance member countries should be made for projects and programs that are consistent with the findings and recommendations of CIAP in its annual reviews of national development activities. The Act also takes into consideration the extent to which development financing will contribute to Latin American economic integration.

"To summarize, I feel that the unanimous decision of the Inter-American Conference at Rio de Janeiro to extend the Alliance beyond the 10-year term originally contemplated has been constructively reinforced by the action of the U.S. Congress in strengthening the Alliance's multilateral character by providing that development loans should be made in accordance with the recommendations of CIAP, which is the central coordinating mechanism of the Alliance."

JOHN ALCANTRA—A BIG MAN

Mr. BARTLETT. Mr. President, it is unfortunate but true that all too often deserving tributes to outstanding public servants are made too late for the recipient to hear.

Such is the case with this brief but sincere tribute to John Alcantra, a public servant who worked effectively to insure that government serve people.

As the Governor's representative in Anchorage he was the human link between government and the people. In John Alcantra's case, the emphasis belongs on human, for he was a man as big in heart and understanding as he was tall and broad shouldered.

John Alcantra, after a long illness, died last month from cancer. Still in his thirties, he had a bright future before him. But to mourn what might have been for John would be to overlook his many accomplishments. Many men who live out their three score and ten years would be proud to have done as much as John did in his short time to make the world a better place to live.

The esteem in which his fellow Alaskans held John Alcantra is communicated in a moving editorial written by Joe Rothstein, editor, in the Anchorage Daily News. I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

JOHN ALCANTRA: A BIG MAN

John Alcantra was a big man. And most of that bigness was heart.

It has been a long time since John Alcantra sat at his desk as Anchorage assistant to Governor Egan. Too long. Many operations and much suffering preceded his death yesterday from cancer.

Hundreds, possibly thousands of Alaskans read of his death with a personal sorrow. For he had aided them at a time when there was no place left to go. He had a deep compassion for his fellow man and he translated that into practical service.

They used to wait outside his door, those who were victims of most of life's petty and larger problems. He knew what to do. He knew what to say. He could sympathize with a worried mother or berate a truculant state official with equal success.

His heart was in his job. He understood that government exists to serve people and that often the higher goals and purposes and policy decisions of government have a startling impact on individuals. He was there to ease the burden or eliminate the source of unnecessary hardship.

In an increasingly catalogued world, no one ever successfully produced a job description for John Alcantra. Legislative finance committees would annually review his activities and ask exactly what he did. The answers never seemed satisfactory.

John Alcantra had created his own job, has own description of public servant.

And those he aided mourn today with his friends the loss of a big and generous man with a big and generous voice and smile whose stay on earth was all too short for his years and promise.—J.R.

BUREAU OF LAND MANAGEMENT EMPLOYEES ARE GOOD SAMARITANS

Mr. MOSS. Mr. President, it is national news when a hoodlum adult group in Grenada, Miss., demonstrates its capacity for hatred and un-Christian conduct by beating small children. Their despicable conduct gives them nationwide notoriety.

Far too often, however, we do not hear about some of the fine things other people do merely as part of the routine of their daily jobs. This was brought forcibly to my attention recently in three short articles which appeared in a recent publication about employees of the Bureau of Land Management of the Department of the Interior. In two instances, the "good Samaritans" were working in my State of Utah.

I ask unanimous consent that the three articles be printed in the CONGRESSIONAL RECORD and I extend to the employees named in them my warm appreciation for their concern for the welfare of their fellow man, for the animals that inhabit our forests and rangelands, and for their demonstrated concern for the well-being of our God-given natural resources.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

BLM EMPLOYEES ARE GOOD SAMARITANS

FIREFIGHTERS RESCUE FAWN

While fighting a forest fire in the Henry Mountains of Utah, BLM firefighters rescued a 2-day-old fawn. It was alone in the burned rubble along a trail in the 700-acre burned-out area.

Following a natural instinct to escape, it darted toward the flames. Frightened by the fire, the deer allowed itself to be captured. It had burned hooves, cracked and charred by the hot ground, and the hair on its legs had been singed.

The firefighters cared for the deer, and took it to the home of Mack Camp, BLM conservation aide, where it seemed to respond to kind treatment. However, a few days later the fawn died—another victim of a forest fire.

DISTRICT EMPLOYEES WIN PRAISE

Don Gipe and Fred Howard of the Kanab District Office, Utah, won praise for helping two visitors stranded on public lands.

The BLM employees came upon Dr. and Mrs. M. R. V. Sahyun of California whose car was stuck in the mud some 10 miles from U.S. 89. Gipe and Howard drove them into town to get help in pulling the car out of the mud.

Later, Dr. Sahyun wrote Acting Director Crow that both men "took a great deal of personal time and went well out of their way to help."

Director Rasmussen said, "This type of extra effort by BLM employees can make us all proud."

GIRL SAVED FROM EXPOSURE

While driving through Melvin Dalton's sheep point allotment, Ray Lewis, range conservationist of the Durango District, Colo., found Dalton's teen-age daughter lying unconscious after being thrown by her horse. He first attended to the girl; then radioed the Durango Office asking them to call an ambulance.

Lewis was showing fence contractors, Bert Sale and Otto McCluskey, future fencing projects in this area.

As range aide Bob Reid searched the area for Dalton, Bert Sale intercepted the ambulance. The girl was taken to Southwest Memorial Hospital in Cortez and treated for concussion and bruises.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If there is no further morning business——

Mr. STENNIS. Mr. President, if there is no further morning business, I suggest the absence of a quorum. If the Senate has further morning business, I withhold the request.

The ACTING PRESIDENT pro tempore. If there is no further morning business, morning business is closed.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STENNIS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MARY T. BROOKS

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (S. 3553) for the relief of Mrs. Mary T. Brooks.

CIVIL RIGHTS ACT OF 1966

The ACTING PRESIDENT pro tempore. The pending question is on agreeing to the motion of the Senator from Michigan [Mr. HART] to proceed to the consideration of the bill (H.R. 14765) to assure nondiscrimination in Federal and State jury selection and service, to facilitate the desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of violence or intimidation, and for other purposes.

Mr. ERVIN. Mr. President——

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from North Carolina.

Mr. HART. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. ERVIN. I yield.

Mr. HART. Mr. President, is my understanding correct that a unanimous-consent agreement has been reached under which, beginning at the hour of 1 o'clock, discussion shall be on the motion to take up the civil rights bill, that the time from then until 2 o'clock shall be divided equally between the majority leader and the minority leader, and that the vote on the cloture motion shall occur at 2 o'clock?

The ACTING PRESIDENT pro tempore. The understanding of the Senator from Michigan is correct.

Mr. HART. I thank the Senator from North Carolina.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina has the floor.

Mr. STENNIS. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. STENNIS. I did not understand the unanimous-consent request of the Senator from Michigan.

Mr. HART. Mr. President, if the Senator will yield, we were not making a unanimous-consent request. We were making inquiry with respect to an agreement earlier reached.

Mr. STENNIS. I thank the Senator from North Carolina.

TITLE IV OF H.R. 14765: A BRIEF ANALYSIS

Mr. ERVIN. Mr. President, the open-occupancy provision of the bill which is the subject of the pending motion has deservedly become the most controversial and infamous title of the proposed Civil Rights Act of 1966. Among the bill's provisions, title IV has received the almost undivided attention of the news media and the public since the day it was first introduced in Congress. In addition title IV of the Senate bill was the subject of careful expert scrutiny during exhaustive hearings held by the Constitutional Rights Subcommittee. But that is not the title IV we are asked to call up.

The open-occupancy provisions of the House bill have not been the subject of a single day's hearings. Nor has there been time to study its provisions and to reflect upon their meaning and implications on the Senate floor. I hope to remedy that to some extent today by analyzing in some detail the provisions of title IV of H.R. 14765.

Before breaking it down section by section, however, I ask the Senate to consider what this legislation attempts to accomplish, how well it is designed to meet those goals and, most importantly, whether Congress has constitutional authority to take such action.

There must be no mistaking the meaning of title IV; it is the first direct Federal assault against the fundamental human right to own and use private property—the first opening wedge of its destruction. This title completely ignores the distinction between the private sector and the public sector.

Heretofore, whenever there have been proposals for further governmental control of the lives and property of citizens they have at least had some connection with the public sector; such as with public accommodations. This proposal, however, reaches the most nonpublic of all transactions, the sale or rental of one's home. It is a frontal assault on the right to own and use private property, the source of liberty, without which all other liberties succumb to tyranny.

From listening to the rhetoric of the proponents for 4 months, it is apparent that the principal goal of title IV is the elimination of what are mistakenly referred to as "ghettos," the slum areas of the Nation's cities. These slum areas breed violence, disease, social disorganization, and result in separating the ghetto inhabitants from the benefits of modern society.

Only Congress—

The Attorney General has said—

can fully commit the Nation to begin to solve the problem [of ghettos] on a national scale. That is the purpose of title IV.

I think it is now undisputed that all the evidence available shows that open-occupancy laws have little or no effect on ghettos in the Nation. Seventeen States, the District of Columbia, Puerto Rico, the Virgin Islands and some 26 municipalities have fair-housing laws. Yet the largest slums and ghettos of which we hear so much are in States with fair-housing laws; and no appreciable change in housing patterns ever followed their enactment. Housing is still inadequate and substandard. At best, the only ones who have benefited by these local laws, and the only ones who would benefit by the proposed national law, are the wealthy and the upper middle class.

On the day the bill was introduced, I noted that—

> If enacted, I fear that such a law would bring false hope and frustration to those who are deluded about its effect and purpose.

There is not a single provision in title IV which will provide better housing for a single American. To argue otherwise is dangerous, and it is cruel to those who are misled.

The proponents also say the Federal Government should go on record as being opposed to distinctions in housing based upon factors such as race, color, religion, and national origin. This is the principle set out in section 401, and it is against this declaration that the entire title must be measured.

The basic objection I have to title IV is to the attempt to force a supposedly moral principle upon private individuals by the power of the Federal Government. It matters not to me how noble the purpose may be said to be—Congress has no affirmative power and is prevented by the limitations written into its authority from coercing the people to behave as Congress deems moral. Among the fundamental rights of men are the rights to associate with whom one chooses, to make choices in one's private affairs as one pleases. Freedom implies the right to make foolish as well as wise choices; and it entitles a man to his prejudices as well as his allergies.

We may deplore the fact that men are not always wise, that they allow factors such as race to interfere with their judgments. But it is the essential freedom of an individual to make his own choices in his private affairs. Freedom to speak and to associate as one sees fit is fundamental not only to our Constitution but also to the very precepts of our society.

This freedom must be protected whether we approve of the way it is exercized or not. Freedom to speak one's thoughts is available not only to those thoughts we approve of, but also to those we despise. Words may be uttered or written as a matter of right—not only words which please our ears but also those which offend them.

My right to choose with whom I will associate is also basic. If I consider race, or religion, or national origin and not the individual merits of my fellows, I may be foolish. But government may not punish me, and may not force me to associate with those I reject.

The nobility of purpose claimed for title IV is no justification for the infringements on personal liberty that it contains. Fundamental private freedoms of speech, of association, of choice of companions—these may not be circumscribed because the purpose is said to be honorable.

There is no greater threat to human freedom than infringements on liberty which seem just and noble. What is considered noble and just is not static. If liberties can be trod upon in the name of "goodness," this claim can be raised for any purpose. There are nations in this world who have destroyed freedom for what they consider the highest morality.

This is my fundamental objection to title IV—the enactment of law and the enlistment of government power in an area which basically involves the free exercise of individual judgment. When government ceaselessly crusades it becomes despotic. When government declares a holy war against social evil, the result inevitably is that freedom is lost for all, the good as well as the evil.

This is the reason freedom of speech prohibits even "good censorship." This is the reason freedom of religion prohibits even "helpful" government participation in religious life.

So it is with the individual right to choose one's neighbors, and to live or not to live in a community peopled with those of similar tastes, backgrounds, and outlooks. So it should be with an individual's right to dispose of private property as he chooses—to make these decisions not only on the basis of financial considerations, but also on the basis of factors which government may, in its wisdom, consider irrelevant.

My opposition to Federal legislation with respect to open occupancy is not swayed by claims that the Congress must go on record as opposing discrimination in housing. Even if the tyranny threatened by the implementing sections of title IV were not involved, I would oppose any attempt to legislate in an area where freedom of speech, conscience, and association, and the right to use private property are involved. For where the principle is established that government can legislate in these areas for good ends, there is no bar to legislation for bad ends. I might add, at this point, that the ballot box in numerous referendums, and the letters I have received, indicate that the vast majority of the Nation agrees with me.

Various constitutional arguments have been offered to support title IV. In fact, there have been so many that I am reminded of that old rule that when there is no good reason for doing something you will always find many bad ones.

The Attorney General has stated that the power granted to Congress by the commerce clause allows it to regulate all housing. He relies on these few words from the Constitution:

> Congress shall have the power to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes.

It should be obvious that real property does not move in the channels of interstate commerce. The very attribute of real property which distinguishes it from all other property excludes it from interstate commerce—its immovability. A house may be bought and sold, but, with the exception of the house trailer and in the absence of acts of God, it never crosses a State line. I fail to see how we can rely upon tornadoes and hurricanes as channels of interstate commerce; and the bill is not limited to the sale and rental of mobile homes.

It is suggested that the materials and furnishings which make up any physical structure once moved in commerce and so is enough to bring the whole into interstate commerce. Congress can, of course, regulate the materials and furnishings as they move in the channels of interstate commerce, but in this instance the flow has stopped and congressional power has ceased. The materials have, by legal definition, assumed the character of realty.

Although the Supreme Court has stretched the commerce clause to cover almost every human endeavor, the precedents relied upon by the proponents to support title IV are inadequate The case which is cited most for support is *Katzenbach* v. *McClung*—379 U.S. 294, 1964—which arose out of the public accommodations title of the Civil Rights Act of 1964.

In upholding that title, the Court relied upon the flow in interstate commerce of the food served by Ollie's Barbecue Stand. That case cannot sustain this title because in McClung the identical individual food items while still in the flow of commerce were the subjects of transactions; the building materials involved here have not only ceased to flow in the stream of interstate commerce but have lost their separate individual identity as they became incorporated in dwellings.

The Attorney General's interpretation of the limits of the commerce clause power is supported by references to the interpenetrations of modern society. But the constitutional fallacy of such scholastic reasoning as a basis for extending Federal power was long ago recognized by Justice Frankfurter in Polish Alliance against Labor Board:

> The interpenetrations of modern society have not wiped out State lines. It is not for us to make inroads upon our Federal system either by indifference to its maintenance or excessive regard for the unifying forces of modern technology. *Scholastic reasoning may prove that no activity is isolated within the boundaries of a single State, but that cannot justify absorption of legislative power by the United States over every activity.* (322 U.S. 643, 650 (1944)) (emphasis added)

If we accept the Attorney General's interpretations of the commerce clause, then this justification will support the absorption of legislative power by the United States over every activity.

To interpret the commerce clause to cover housing in the way suggested, swallows up the entire constitutional principle of a federal government of limited powers. It establishes the constitutional principle that the Federal Government has legislative powers as broad as that of the States. I challenge the proponents of this bill to mention

any area of human activity not subject to Federal legislation under their interpretation of the commerce clause.

Those who argue that the provisions of title IV can be sustained under the power granted to Congress by the commerce clause do well to give careful thought to the consequences if their position is ultimately accepted.

It is elementary that this Nation was founded and has become great upon the proposition that the powers of government are derived from the governed, and that liberty is directly dependent upon the degree to which the individual is able to remain free from governmental control. A corollary to this idea is the restraint on governmental power embodied in the Federal system according to which the National Government has only those powers granted to it.

We should appreciate that "federalism" is not a meaningless platitude nor an outmoded cliche. It is not merely a happy accident of history; not merely a convenient tool of government. Rather, it is the foundation of our Government. The administration's interpretation of the commerce clause destroys this foundation. It is an interpretation of one constitutional clause concerning interstate commerce by which the Federal Government could ultimately control every activity of every American from the time he is born till the time he "shuffles off this mortal coil."

The 14th amendment reads:

No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

But, says the Attorney General:

Title IV is also sustainable as "appropriate legislation" to enforce the substantive guarantees of the 14th amendment.

He ignores the words, "No State shall." It is an easy matter of constitutional interpretation, according to the Attorney General, to reject the established and unquestioned judicial interpretation of almost a century which regarded the words "no State" as meaning "no State." According to the Justice Department, "no State" means "no person," and so, it follows quite easily that Congress may prevent private action which it considers in violation of the 14th amendment.

My mind cannot give assent to such distortion of simple words.

The Attorney General, however, also supports title IV under the 14th amendment with another argument, although this one too requires him to torture its words unmercifully.

Moreover—

He has claimed—

it is highly relevant that government action—both State and Federal—has contributed so much to existing patterns of housing segregation. . . . With such a history of past governmental support, it can hardly be argued that present practices represent purely private choice.

Well, I think that present housing practices do represent private choice. People do tend to associate with persons of similar tastes, backgrounds, and outlooks. The housing patterns of this Nation and in every social grouping on the earth, bear testimony that people tend to associate with those who belong to their group and class, and this characteristic is demonstrated whether government encourages it, ignores it, or actively tries to oppose it.

What cannot be argued, however, is that the 14th amendment justifies governmental action wherever government influence is felt, which is the core of the argument propounded by the Attorney General. A more tyrannical theory could never be asserted.

From the beginnings of time until today, government has tended to assert its influence into every sphere of human endeavor. It was this tendency of government that was the source of the limitations written into the charter of Federal power in 1787. The Attorney General is really arguing that because Government tends to intrude upon areas of private endeavor where it has no authority, this very intrusion justifies additional coercion and additional intrusions. Government has no business in the private decisions of homeowners as to how they will use or dispose of their property. If in the past it has interfered in this area, this cannot be used as a justification for further inroads upon private rights.

Not only are there no constitutional sources of power, either in the commerce clause or the 14th amendment, for government coercion on these private rights, but there are also specific constitutional prohibitions on our legislative power to enact title IV.

Much has been said recently concerning human rights as opposed to property rights. This is nonsense. Property has no rights, only attributes. The right to property is a human right, a civil right—a right expressly protected by the Constitution. It is one of the basic rights of a free people. Conversely, failure to protect the human right to property is a typical characteristic of totalitarian States along with the denial of freedom of speech, press, and religion.

The basic human right not to be deprived of liberty or property without due process of law—the only right expressly mentioned in both the 14th amendment and the Bill of Rights—would be sacrificed by this title to a new so-called right of open occupancy. We are forbidden by the fifth amendment from making the sacrifice.

It is a fundamental canon of construction of written documents, whether they are contracts, statutes, or constitutions, that expression of one thing implies the exclusion of another. The fifth amendment provides "nor shall private property be taken for public use, without just compensation." The express goal of title IV is to deprive Americans of one right—the right to dispose of their property as they see fit. It does this in order that housing patterns conform to the public weal as the Federal Government sees it.

And to whom is this right given? The right deprived by title IV is for the benefit of certain classes of people. The buyer may use the powers conferred by title IV to obtain private property for his own private use. If the fifth amendment prohibits public taking of private property for public use without compensation, it is elementary that it prohibits absolutely the public taking of private property for private use.

The inevitable suppression of the American peoples' rights, liberties, and freedoms which would ensue should Congress enact title IV has been elucidated by Justice Harlan in his concurring opinion in *Peterson* v. *Greenville*—373 U.S. 244—1963:

Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be irrational, arbitrary, capricious, even unjust in his personal relations are things all entitled to a large measure of protection from governmental interference. This liberty would be overridden, in the name of equality, if the strictures of the amendment were applied to governmental and private action without distinction. Also inherent in the concept of State action are values of federalism, a recognition that there are areas of private rights upon which Federal power should not lay a heavy hand and which should properly be left to the more precise instruments of local authority.

Furthermore, there are other human rights and freedoms protected from governmental interference which are placed in jeopardy by this legislation. Among those are the right to freedom of association, recognized in the case of *NAACP* v. *Alabama*, 357 U.S. 449—1958, and the right to privacy recognized in the case of *Griswold* v. *Connecticut*, 381 U.S. 497—1965. As Justice Douglas said in Griswold at page 484:

The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. . . . The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

And again at page 485:

Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

No one would contend that Congress may use the legislative power conferred by section 5 of the 14th amendment or by the commerce clause in a way which would invade those liberties specifically guaranteed by the 1st section of the 14th amendment, or by the 5th amendment, or by the first 10 taken together. But this is what title IV would do.

So weak and superficial is the constitutional justification for title IV that many advocates no longer seek to support it by constitutional argument. They direct our attention to the social and economic ends sought by the measure and they meet the constitutional argument only by suggesting that the Constitution belongs to the Supreme Court. They argue that we should pass the law, and leave these worrisome problems to the men across the street.

These advocates ignore the fact that each Senator takes an oath of office to uphold and support the Constitution. It is our first responsibility, not our last, to square all legislation with this obligation and to reject even the most appealing, if in our judgment, we conclude we have no power to act.

To suggest that we should not be too troubled by the constitutional doubts of title IV completely ignores the purpose of that oath, and completely disregards our most important function as legislators. It is totally unsupportable according to the traditions and decisions of American jurisprudence and the principle of separate coequal powers. The Supreme Court, according to its own rules of interpretation, is guided by one overriding presumption when undertaking its function of judicial review, a presumption which should dispel the notion of our abdicating congressional responsibility.

The Court assumes that the Congress is no less mindful than the judiciary of the restraints imposed upon the powers of the National Government by the Constitution, and that, prior to its approval of any measure, the legislative branch conscientiously appraised its validity and in perfect good faith concluded that the enactment met the test of constitutionality. Therefore, the Court will not consider the constitutional question if that can be avoided; and if it does consider the question, the burden is on him who challenges the act's constitutionality.

The Court has expressed this many times and recently as follows:

> This Court does and should accord a strong presumption of constitutionality to Acts of Congress. This is not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of the two Houses of Congress that an Act is within their delegated power or is necessary and proper to execution of that power. (*U.S.* v. *Gambling Devices*, 346 U.S. 441, 449 (1953)).

Congress cannot shift its responsibility to the Attorney General and assume that a legislative proposal is constitutional because he asserts that it is. The duty and responsibility rests solely upon the shoulders of each Senator to determine whether a proposed measure is compatible with our Constitution.

Many of us, unfortunately, attempt to discharge this duty by predicting what the Supreme Court will hold when a given bill under consideration is ultimately reviewed. This may be a natural reaction, but it utterly fails to comprehend the nature of the responsibility we face.

Court decisions are, of course, useful tools which we may use to recognize legislative limitations and obligations. But we should not, by contenting ourselves with reading the tea leaves of past judicial decisions, escape the duty of deciding for ourselves what is constitutional.

This is not what the Constitution expects of us. On the contrary, it requires that we look to the language, the intent, and the legislative history of each of its provisions in determining whether a bill is consonant with that document.

The Court properly upholds the constitutionality of any Act of Congress unless it finds that what we have done is clearly repugnant to the words and spirit of the Constitution.

So, I ask that all Senators act as more than fortunetellers—that they judge the provisions of title IV against the mandates and prohibitions of the Constitution according to their own individual intellect and conscience and not abdicate that responsibility to the Court or to the Attorney General.

I have considered long and carefully the constitutional questions created by title IV. As chairman of the Constitutional Rights Subcommittee, I sat through 22 days of hearings and each day I heard supporters and opponents argue the congressional authority for title IV. I have studied the cases interpreting the commerce clause and the 14th amendment. I have heard the arguments of the Attorney General, and of professors of constitutional law.

I have made my own judgment according to my oath of office as a U.S. Senator, and I have concluded that the entire title is clearly beyond the constitutional authority of Congress—under either the commerce clause or the 14th amendment. Furthermore, I consider that it violates freedom of association, implicit in the first amendment, the individual right to own and use private property, explicit in the fifth amendment; and partially, the right to privacy within the penumbra of the Bill of Rights.

These constitutional arguments apply equally to the original version, and to the House version. The only difference is that the original bill is much more popular. President Johnson, Attorney General Katzenbach, Secretary Weaver, Dr. King, and Mr. Roy Wilkins, all say they much prefer the original administration version rather than the version which is sought to be brought up.

Among the opponents, the National Association of Real Estate Boards, many State associations and private realtors, the National Association of Home Builders, and several professors of law, feel that the House version is more offensive than the administration's proposal. It would seem that the only reason for seeking to bring up the House version is an attempt by compromise to obscure the destruction of fundamenal principle proposed; it is an excuse for those who have neither the courage to stand for freedom nor the fortitude to stand for open occupancy.

What kind of useless exercise do we perform in calling to end debate in order to act on a bill which nobody wants?

The American people and I are in agreement in opposing this compromise with principle. In every single instance in which open occupancy has been put to the people, they have overwhelmingly rejected it. For instance, the people of the State of California, and the cities of Seattle, Tacoma, Akron, Omaha, Detroit, and Berkeley have defeated decisively by referendum such propositions.

In the recent primary election in Maryland, the candidate who steadfastly opposed any surrender of principle has apparently won the Democratic nomination for Governor. It is extraordinary that we should attempt to impose on every American what obviously the great majority do not want.

The provisions of title IV are anything but an excuse for the legislative circus in which we are engaged. The title states a broad policy. Then it proceeds to make ambiguous exceptions justified only on the grounds of political expediency.

The acts it prohibits are both vague and comprehensive. They stem only from the motive of the homeowner—an element at once easy to assert and difficult to disprove. In its willy-nilly proscriptions, title IV protects some rights not mentioned in its policy section; such as, "economic status" and "age and number of children," and at the same time it transgresses not once but twice on first amendment freedoms of speech and press.

Title IV empowers not one, but fully five different agencies of Government to enforce its provisions. State and Federal courts, the Attorney General, the Fair Housing Board, and Department of Housing and Urban Development, each would have a hand in implementing it. Perhaps this is a tacit recognition of the difficulties its loose and careless drafting will cause.

One need not have much experience with Government to foresee the confusing and contradictory welter of rules, decisions, regulations, and orders that will result as these 5 separate agencies struggle to apply title IV to 35 million homeowners across the Nation.

Section 401 states that—

> It is the policy of the United States to prevent discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use, and occupancy of housing throughout the Nation.

After that sweeping statement, the authors provide in section 403(b) that the title shall not apply to an owner who sells or rents a portion of a building which contains living quarters for no more than four families if he occupies one of the quarters as his residence. And sections 402(d) and 403(a) taken together provide that a person who has participated in less than three transactions in the preceding 12 months is exempt.

There is no difference in principle between those who have four and those who have five, or six, or seven units. Upon what standard does "four" become the line between constitutional authority and none? On the same grounds, what is to prevent the title from later being amended to three units, then two, then one, then a room? The proponents make no secret of their dissatisfaction with section 403(d) and it will not be

long before it is cast aside. The same question applies to the "three-transaction exemption" defined in section 402(d).

What is a "transaction"? Is it the rental of a room on a month-to-month basis? Is the sale of one's home and the purchase of another one transaction or two? Is the construction and management lease of a hundred-unit high-rise 1, 2, or 100 transactions where the owner employs a rental agent who later violates the act? Will owners who are exempt and who do not violate the act be responsible for their agents who do? What will be the rules and regulations that will be born from this language? Nobody knows, for there have been no hearings on these sections.

None of the proponents like these exemptions—it is no secret that they were purchased for a handful of votes. No one should be misled that the time will be long before these words are stricken and title IV becomes once again, the blanket prohibition it originally was.

If we embrace the principle of title IV, as now written, we must agree to the principle without exception.

Section 403(a) contains eight subsections setting forth some 12 to 15 activities declared unlawful.

The scope and vagueness of these activities are apparent when they are translated into plain English. This is what subsection 403(a) prohibits when done because of one of the specified characteristics of the client:

To refuse to sell, rent, or lease.

To refuse to negotiate.

To make unavailable or deny a dwelling.

To discriminate in the terms or conditions of a sale, rental, or lease.

To discriminate in the provision of services or facilities.

To print or utter a preference or an intention to make a preference.

To fail or refuse to show a dwelling.

To fail to submit promptly an offer.

To fail or refuse to use one's best efforts.

To represent that a dwelling is not available for inspection when in fact it is.

To prevent access to multiple listing services.

To engage in any act which restricts housing to any group of persons.

To induce or attempt to induce the sale of a house by representations concerning the race, color, religion, national origin, or economic status of future inhabitants.

This enumeration covers almost every conceivable activity in which a party wishing to sell or rent a house could possibly engage. The authors are to be congratulated on their imagination.

There is no mention in title IV of the burden of proof that has to be met by the plaintiff. A prima facie case could be made in every case in which two people of different race, color, religion, or national origin are parties to an unsuccessful real estate transaction. This is so because every time a white man failed to sell to a Negro, or every time a Jew failed to negotiate with a Catholic, or a Methodist failed to submit promptly the offer of a Baptist, it could, with excellent chance of success, be alleged that race or religion was one of the reasons for his behavior.

The parties need only come from different classes and it could be alleged that a defendant failed to use his best efforts in consummating a given transaction.

How will the defendant meet such allegations? It will be a rare day when he gives as his motive one that is prohibited by section 403. Must the defendant point to his friends and associates and demonstrate to the court that some of his best friends are Negroes, or Jews, or Seventh-day Adventists, or couples with four children, or American Indians?

There can be no denying that, faced with the possibility of law suits involving matters as vague and obscure as this, the homeowner will find himself constrained to accede very quickly to the demands of the purchaser or tenant lest he be accused of discrimination and hauled before the courts or the Fair Housing Board.

The haphazard way in which the bill is drafted is illustrated by the language prohibiting discrimination because of "the number of children or the age of such children" which appears in subsections (1), (2), (3), and (7) of section 403(a), but not the other four.

Section 403(a)(4) could be considered as ludicrous if it were not so serious. The House added language to the original bill requiring realtors and homeowners to use their best efforts to consummate any sale, rental, or lease. The Attorney General has admitted that there are no comparable laws requiring any other profession or seller to use best efforts. Why does the Congress choose real estate brokers from all others for this dubious distinction? Why should not doctors, or lawyers, or politicians, or Senators not also be required by law to use their best efforts?

If homeowners are to use best efforts to sell their home, why should peanut vendors not also use their best efforts to sell their peanuts? This is a bill to promote equality, and all are to be treated equally, perhaps an amendment to this effect should be offered by the proponents.

The following amendment would be in harmony with the other provisions of the bill:

On page 31, line 11, strike the period at the end of the subsection, inserting a semicolon and adding the following words: "or for any physician, attorney, architect, accountant, funeral director, or any other member of any other profession to refuse any client on the basis of race, color, religion, or national origin, or to fail to use his best efforts on the behalf of such client."

Subsection (3) would make it unlawful to make any oral or written statement that indicates any preference based on race, color, religion, national origin or number of children or the age of such children. Subsection (8) declares it unlawful to induce a sale or rental by making representations regarding the present or prospective entry into the neighborhood of persons of a particular race, color, religion, national origin, or economic status. These two provisions, in my judgment, violate the freedom of speech protected from abridgment by the first amendment. Subsection (8) was placed in the bill on the House floor after the hearing before the Constitutional Rights Subcommittee had closed. However, the House Judiciary Committee had reported out the bill with subsection (3) while the hearings were still in progress. Mr. Lawrence Speiser speaking for the American Civil Liberties Union agreed with me that subsection (3) was unconstitutional, and even the Attorney General conceded he saw problems with it.

We come now to the extraordinary enforcement provisions of title IV which deserve special scrutiny.

Briefly, the title provides that an individual without payment of fees, costs or security, and without regard to the amount in controversy, may have a court-appointed attorney bring a civil action. The court can grant a permament or temporary injunction, or other order, and it may award actual damages without limit as to amount. The Attorney General may intervene in a private suit if he feels the action is of general public importance.

Additionally, he can on his own, institute suits when he believes a person is engaged in a patterr or practice of resistance to the full enjoyment of any right granted by the title. Federal courts are also encouraged to defer to State enforcement of local laws with similar application. There is also established a Fair Housing Board which will exercise judicial functions administratively, and the Secretary of Housing and Urban Development is given broad powers of investigation and is authorized to prosecute his or other's complaints before the Board.

Generally, section 406 grants enforcement powers to private persons and sets forth the appropriate relief. Section 406(c) provides that—

The court may grant such a relief as it deems appropriate including a permanent or temporary injunction, restraining order, or other order, and may award actual damages to the plaintiff, or, in the alternative, if the defendant has received or agreed to receive compensation for service during the course of which the discriminatory housing practice occurred, the court may award as liquidated damages an amount not exceeding the amount of such compensation.

Because the court usually grants a preliminary restraining order ex parte merely upon the applicant's affidavit and without notice to the defendant, real estate transactions will be continually upset and frustrated.

As the court may issue any other order it could by mandatory injunction order a completed real estate transaction nullified and transfer of title to the plaintiff.

Section 406(a) allows the plaintiff 6 months to file his suit. By this time the house could already have been sold or perhaps taken off the market. What kind of relief would be forthcoming so long after the incident? Is the new occupant to be turned out? Must the owner now sell the house he still wants to keep? Or must he be smitten with damages and perhaps have to sell his house to raise the funds?

Section 407(a) authorizes the Attorney General to bring a civil action whenever he has reasonable cause to believe that any person or group of persons is

engaged in a pattern or practice of resistance to the full enjoyment of any right granted by this title.

There is no necessity of his having received any complaint from anyone. Section 407(b) authorizes him to intervene in a private suit if he certifies that the action is of general public importance. These provisions grant to the Attorney General, who has behind him the vast power and resources of the Justice Department, broad and complete authority of investigation and prosecution against anyone whom he might suspect of having violated any right protected by this title. The Attorney General is not authorized to assist and defend homeowners in the same fashion.

But the most mischievous enforcement provision of the title is the Fair Housing Board which would be established by section 408. The Board is given authority to conduct hearings on complaints which the Secretary of Housing and Urban Development may file. There is no mention of authority to act on its own initiative or to process individual complaints received from disappointed purchasers. However, the Fair Housing Board was hastily drafted into the bill by reference to the National Labor Relations Board in title 29 United States Code, and there is no doubt it will have the same powers, the same energy, the same lack of objectivity, and the same nonjudicial approach that the National Labor Relations Board has now with respect to matters within its jurisdiction.

The authors of this section were apparently in such a hurry to have it passed that they did not take the time to write out the powers and duties of the Board or the Secretary. Section 408(e) simply provides that—

> For purposes of investigation the Secretary shall have, and for purposes of hearing the Board shall have, the same powers and shall be subject to the same conditions and limitations as are provided for the National Labor Relations Board under section 161 of title 29, United States Code.

Upon the receipt of a complaint from the Secretary and service upon the person charged with a violation, it is provided that a hearing shall be had. The Board shall conduct hearings and shall issue and enforce orders in the same manner and shall be subject to the same conditions and limitations and appellate procedures as are provided for the National Labor Relations Board and a violation of this title shall be treated in the same manner as an unfair labor practice under the Fair Labor Standards Act.

Not one of the supporters of this title has uttered one word to explain how or why a violation of this title should or could be treated as an unfair labor practice. The only analogy I see is this: In order to establish a prima facie case of an unfair labor practice, it is sufficient to show an individual was engaged in union activity and was discharged. If a frustrated purchaser can show he is the member of a minority group and was refused a sale, then the burden of proof falls on the defendant homeowner.

It is not these absurdities, however, which constitute the greatest mischief of this section. It is the creation of another administrative agency, among the dozens already in existence, charged with carrying out policy and given legislative and judicial powers to do so.

It is unwise to subject the rights of citizens to the determination of an agency which is not designed to administer justice but to carry out a policy on behalf of certain groups. Congress should provide that rights are to be determined by the courts—the only institution qualified to administer justice.

Taken together the enforcement provisions of title IV constitute a powerful tool for the harassment of property owners and real estate brokers. If this bill is called up not only will we be considering a vague and sloppy title IV, but we will also be asked to endorse the unknown, indeterminable regulations to be promulgated by the Fair Housing Board, and the as yet non-existent policies of the Secretary of Housing and Urban Development.

The policies of the Federal Trade Commission and the Antitrust Division of the Justice Department illustrate that different agencies charged with the same task inevitably view their functions and their objectives in conflicting ways. Our experience should at least dictate that we choose one forum, not five, so that the seller who must conform need not struggle to satisfy so many quarreling masters.

Today, I have tried to point up a few of the difficulties inherent in the language of title IV and the problems that would bedevil the Nation if it is enacted. The provisions constitute a destruction of liberty—the greatest and most fundamental value of civilization. If the American people by lack of vigilance allow their liberty to be narrowed in this way, the long struggle of mankind to secure freedom from governmental tyranny will be dealt a mighty blow.

Overall, title IV is a completely unworthy proposal. It will not accomplish its asserted purpose; it is poorly drafted and basically unjust; it creates another in the vast horde of Federal agencies, one with limitless authority to control the private activities of all citizens. It is clearly beyond the constitutional power of Congress. It tramples private rights to property use and a collection of first amendment rights as well.

For all these reasons, therefore, I urge the Senate not to call up title IV of H.R. 14765.

The ACTING PRESIDENT pro tempore. The time of 1 p.m. having arrived, the hour between 1 p.m. and 2 p.m. will be under the control of the majority leader and the minority leader, to be divided equally between them.

Who yields time?

Mr. DIRKSEN. Mr. President, I think that under the rule there is a requirement for a quorum call before debate can begin.

The ACTING PRESIDENT pro tempore. The Chair informs the Senator from Illinois that that will be at 2 o'clock.

Mr. DIRKSEN. Perhaps it has been waived.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a quorum call, without the time being charged to either side.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DIRKSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DIRKSEN. Mr. President, I yield to the distinguished Senator from Alabama such time as he requires.

Mr. SPARKMAN. Mr. President, in many of the debates in which I have been engaged on the floor of the Senate on the subject of civil rights for a number of years, I have made the point that legislation is not the answer to the question. I warned that legislation enacted because there was disturbance would in all probability bring on more disturbance and violence, because people would gain the impression that a definitely proved way to get legislation enacted was by racial disturbance and violence.

In spite of my warnings, Congress has set the pattern of enacting legislation in times of great emotional feeling over racial matters as an apparent answer to the problem and as the politically popular thing to do.

We now see the results. One wave after another of disregard of the property rights of others, street demonstrations, racial ultimatums, violence, and even bloodshed, has struck various parts of our Nation.

I have reread an editorial in the Wall Street Journal of June 20, 1963, which I ask unanimous consent to have printed in the RECORD as part of my remarks.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE WRONG AND THE REMEDY

More than three months ago President Kennedy proposed additional civil-rights legislation, principally concerned with strengthening the voting privilege for Negroes. Presumably, after long consideration, this bill was the sum of what Mr. Kennedy thought necessary to meet the problem.

Yesterday Mr. Kennedy sent to Capitol Hill new and far more sweeping recommendations. His message is frankly a response, developed only in the past few weeks, to the increasing violence which is marring race relations. The fires of frustration and discord, he says, are burning hotter than ever; worse explosions are in store unless the Federal Government leads the way to immediate remedies.

We find this tone of haste, almost of political panic, deeply disturbing. This, if nothing else, raises the most serious questions about the proposed remedy, particularly as it applies to privately owned "accommodations" which serve the public.

It is true, at least in our opinion and that of most Americans, that a Negro traveler should be able to stop at a public inn and not be turned away solely because of his race. It is a fact that he is still denied that opportunity in many places. That is a wrong which, as the President says, calls for a remedy.

But it is also true, as the President acknowledges, that it is being rapidly remedied. Some 30 states, the District of Columbia and

numerous cities have enacted laws against discrimination in places of public accommodation; in addition, merchants have done it on their own. In Mr. Kennedy's words, "many doors long closed to Negroes, North and South, have been opened."

In those circumstances it is a question whether a Federal law is needed to remedy what is already being remedied. The President's only real justification is that the progress is not fast enough. That seems to us a dubious justification for a law of this nature.

One of the proffered legal excuses for it is the Constitution's interstate commerce clause. Under this interpretation, almost every retail establishment in the nation, from the lowliest hot-dog stand to the grandest hotel, could be swept under new control, because almost all at some time use goods that cross state lines or serve people that do. Whatever else it may be, this is a swift and surging expansion of central authority.

The other proffered Constitutional basis for the measure is the Fourteenth Amendment provision that no state law shall permit unequal treatment of any of its citizens. But the Amendment also says no state shall deprive any person of property without due process of law. Anti-discrimination legislation, whether local or Federal, must risk doing just that.

Suppose a woman makes a meager living taking transients in her own home. If she does not want to accept Negroes, is she subject to the penalties of the law? If so and she refuses to comply, she has the choice of giving up her livelihood. Or the owner of a modest restaurant may not feel any personal prejudice and yet know that if he opens his doors his clientele will become exclusively Negro; if he doesn't want that, he also has the choice of abandoning his property.

Does the Negro citizen's right to equality of treatment transcend another citizen's right to use his property as he sees fit? If so, it is not a very big step to decreeing that the private home-owner is no longer free to dispose of his property as he chooses.

The sad part is that the clash of rights does not have to be brought to this point. With patience and a minimal amount of good will on each side, it can be resolved by individuals and within communities. The proof is that it is being resolved in so many places North and South.

If nothing at all were being done to improve the Negro's position, the Federal Government's case for the course of compulsion would be more understandable. As it is, the nation should think hard about a legislative course conceived in such haste, with such highly political overtones, and proposed as a conscious concession to illegal mob violence.

Most particularly we should all be concerned about the underlying attitude: That where there is a wrong, any remedy will do—no matter what fresh wrongs the remedy brings forth.

Mr. SPARKMAN. The above editorial was a rather strong warning against the legislation proposed in 1963 and enacted in 1964, and branded it as legislation "proposed as a concious concession to illegal mob violence."

This is even more true today than it was when the editorial was written. Concessions to the violation of the property rights of others and to a lack of respect for law and order should not be the basis of legislation. Cast it as one may, and one will still find that element in what is proposed to us at this time. I stand firmly against continuing this process.

I would add to this by saying that the present bill is more than a concession to these forces; it is an affirmative proposal to take away the property rights of our citizens and to restrict them in their use and disposition of their own property without any claim of a Federal interest being attached to the land other than the fact that the Central Government, the Federal Government, has decided to tell its citizens how they can and must rent or dispose of their property.

Mr. President, we are soon to vote a second time on cloture of debate on the motion to take up the House-passed civil rights bill of 1966, H.R. 14765.

I was pleased to see that the vote taken last Wednesday failed to receive the necessary two-thirds of those present and voting to close debate on this same subject. I see no reason to expect an increase in the votes for cloture today. The number of votes against it could be even greater.

I shall vote against cloture, consistent with my practice and legislative philosophy.

It is an accepted historical fact that the Senate has always been reluctant to invoke cloture and impose a gag on its Members. I regret that the tradition of the Senate against cloture was violated in 1964 and again in 1965 to allow passage without further debate, except within the time limitations of cloture, of the drastic civil rights and voting rights measures of those years. Time, I believe, will show that those decisions were not wise.

When cloture on a civil rights bill was finally voted in 1964, it was the result of the 12th attempt to invoke cloture on this type of bill. This illustrates the reluctance of the Senate to impose cloture on its Members.

Prior to voting cloture in civil rights measures, the Senate had invoked cloture only five times: in 1919 regarding the Treaty of Versailles; in 1926 regarding the World Court; in 1927 on branch banking; and again within 2 weeks on creating a Bureau of Customs and Prohibition; and in 1962 on debate on the Communication Satellite Act. In my opinion, we have already given this civil rights bill far more attention and status than it deserves in the effort to give it a place among these exceptions to the rule of unlimited debate in the Senate.

Anyone who reads Lindsay Rogers' book, "The American State," will note Mr. Rogers strongly contends that liberty of debate in the Senate acts as a salutary check on the administration of government, that it protects the right of the minority to be heard, and that it affords at least one forum in our Nation for the free consideration of issues which otherwise might never see the light of day.

It is my opinion that, if we throw aside tradition and move away from freedom of debate in the Senate, we will go against the fundamental purposes of the Senate as expressed from the days of Alexander Hamilton and the Federalist Papers right up to the present. I believe this is true particularly of civil rights legislation freighted with emotion and burdened with broad social and economic implications and legal complexities.

This measure is pregnant with defects. It was conceived in political need and social impetuosity. As I have said before, it is a product of social engineering, not of constitutional legislative deliberation. And we are faced with this bad bill here on the floor because it was not referred to committee and because the leadership moved to take it up before the customary legislative processes were fully used. Placed in this context, the Senate is under even stronger restraints than usual not to impose cloture. Senators on the floor must take the place of committees of the Senate on a measure that is extremely complex, and if it is passed in its present form, it will, in my opinion, occasion further disregard of law. Cloture under such circumstances would be arbitrary and extreme.

Let me point out just a few salient features of this bill that will illustrate the point.

The main objectives of this current omnibus proposal appear to be, first, to require the individual citizen to dispose of his own real property under conditions established and imposed by the Federal Government and, second, to find a vehicle by which the Federal courts and, in essence, the Federal executive could control State jury systems.

That these two objectives should be attained by law—by act of Congress—is inconceivable to anyone who takes the Constitution seriously and who believes that the States still retain certain inherent powers and the citizen certain inalienable rights. Yet they were proposed and they were placed in one bill, not in separate bills. They are titles II and IV of the present bill.

Title I, reform in the Federal jury system, was added as what seems to be a counterbalance or self-justification for attempting to tamper with the jury structure of the States. But title I has backfired. The existing Federal courts do not appear to be pleased with it, and it has pitfalls, such as the practically unlimited power of judicial councils to name any conceivable source or sources of names for jury service.

Title V, making interference with civil rights a crime with heavy penalties, and title III, for further civil injunctive powers to the Attorney General, are in themselves drastic and complicated legal steps. They are sweeping proposals which should be given vastly more congressional study than they have yet received before we even debate them. The same is true of title VI, which would allow the Attorney General to file school integration cases whenever or wherever he pleases throughout the Nation on the written complaint of only one disgruntled person. I am against this both in principle and in procedure. It alone would warrant prolonged debate.

I have expressed in earlier remarks my objections to the unconstitutional housing proposals of title IV, though perhaps not as fully as my concern warrants. I would like to point out at this time, however, and with emphasis, that title IV contains a new House proposal for a

Fair Housing Board to enforce the housing provisions of this bill. It would have powers comparable by reference in the bill to those of the National Labor Relations Board. The Secretary of Housing and Urban Development would have unusual investigative powers comparable to those of the National Labor Relations Board and could supervise the processing of alleged violations of the unwarranted provisions of this title.

As we know, the National Labor Relations Board deals with corporations and with labor unions, both powerful entities well able to defend themselves. Here the massive powers of a Cabinet officer and an executive department which would be enlarged even under the bill, would, in most foreseeable cases, be directed against the individual citizen. This is a dangerous proposal in a field wherein the Federal Government has no authority.

Mr. President, I am reminded of the comment of former Senator William Benton, of Connecticut, in 1951. He said:

> Personally, I don't believe there would be much talk about (cloture) if it weren't for the fact that it is standing in the way of civil rights legislation. I haven't heard anybody object to it on other grounds.

This is true, Mr. President. Demands for cloture invariably arise when civil rights legislation is before the Senate and almost never on any other legislation. Let me remind those who press so strongly for cloture today that they may have reason to preserve this practice, for they may someday need it themselves. They may someday be among the few, and have need of a check with which to counter the many.

Mr. President, I am opposed both to cloture and to the proposed Civil Rights Act of 1966 in toto and in its several very dangerous and unjustified parts. As I have indicated earlier, I am particularly concerned about title IV, commonly called the fair housing title, and expect to address myself to this subject in considerable detail because it would foist upon the American public an arbitrary attempt by governmental action to tell our citizens to whom they must sell their property. By and large, the average American looks upon his right to own and to sell real property as being fundamental. Not only is this attitude steeped in the traditions of our Nation, but also it is a part of our thinking and attitude toward the few remaining private rights that an individual has left to him free from governmental interference. It is not appropriate for Congress to take the unconstitutional action of attempting to deprive our citizens of this sacred right.

I might say that I am prepared fully to have much to say about the other parts of this bill, especially title II, the so-called elimination of discrimination in State court juries. At this point, and before moving more fully into title IV, I would like to observe that in these provisions the strong arm of the Federal Government would be thrust into the cradle of American democracy—namely, the jury system as it was devised and designed in our Constitution. This system should not be cast aside as though it were a passing dream instead of a bastion of protection of our form of government and a bulwark of defense for the individual against the ravages of an arbitrary government. These are factors which, in light of history and the birth of our Constitution, let the jury system see the light of day in this country and let it be reserved primarily to our State governments.

There are other parts of this bill that ignore completely our normal system of trial and the rules of evidence as well as the burden of proof. These are designed to clothe the Attorney General and parties litigant, particularly plaintiffs, with rather plenary powers that can rapidly lead to abuse. The evils and annoyances that can result could, and probably would, outweigh the so-called advantages they are designed to attain. I do not approve of sacrificing experience and the wisdom of our forebears for experiments in sociology.

On January 12, 1966, the President of the United States, in his address to the Congress—page 143, CONGRESSIONAL RECORD of that date—stated that he proposed:

> Legislation resting on the fullest constitutional authority of the Federal government to prohibit racial discrimination in housing.

When I heard that portion of the President's message, I wondered what the "fullest constitutional authority" actually was to which the President referred. I was familiar with the powers of Congress, as distinguished from those of the President, to impose open occupancy requirements in housing where Federal funds are used or where there is a substantial Federal interest, should it so desire. I was familiar also with the fact that Congress had provided specific exemptions in the Civil Rights Act of 1964, in the case of Government insurance or guaranty of a loan. I was not familiar, however, with any further or heretofore unused power of Congress to lay down broad open-occupancy housing requirements across the length and breadth of this Nation on purely private land and buildings without any Federal interest or any excuse for such an interest.

Accordingly, I gave the matter some thought and study, since housing has been a subject to which I have applied myself for many years in Congress. I found no such authority and I came to the definite conclusion that if such authority should exist in the light of the possibility of continued liberal trends in Supreme Court decisions, then proposed legislation along these lines would be bad policy—very bad indeed.

Therefore, I sought with interest to see the legal and policy justifications which the President would give for this bill in his message to Congress on April 28, 1966, on the forthcoming civil rights legislation.

THE PRESIDENT'S MESSAGE

To say the least, I was far from impressed with the President's message on this bill. In it the President merely stated that there was a need for compulsory legislation to enable people to buy homes or rent dwelling places in every State in the United States. He quoted an old statute, in fact a statute 100 years old, to show that Congress has been mindful of this problem heretofore and has taken action. That statute is section 1982 of title 42 of the United States Code:

> All citizens of the United States shall have the same right in every State and territory, as is enjoyed by white citizens thereof to inherit, purchase, sell, hold and convey real and personal property.

I have been familiar with this old law for some time. To be sure of my impression about it, I rechecked its legislative history. It was one of the early post Civil War statutes designed to assure Negroes the full rights of citizenship. It simply states general law and general privileges of citizenship in simple terms—namely that every citizen, regardless of race, can inherit property, and buy, lease, or sell it. Under its terms, the freedom of the individual citizen is not deprived of the right to sell or dispose of his property as he chooses to do.

It is obvious that the President and the Attorney General want a law that will go further and will give not only the equal rights which Congress said 100 years ago that every citizen shall have, but also special rights under title IV as proposed, substituting inequality for the principle of freedom of choice and of equality that Congress had in mind 100 years ago in the statute to which the President referred.

The President in his message next made reference to President Kennedy's Executive order on housing—Executive Order No. 11063 issued November 20, 1962—which order I opposed vigorously as an unconstitutional usurpation of legislative power by the President. The President seemed to indicate in his message that this order, as devoid of authority as it was, and is, was a precedent for the drastic action which he asked Congress to take and which is before us now. To this I take issue very strongly, even when I realize that the President used it in his message only to show the attitude and action of the executive branch of the Government on this subject. Let us put the record straight right now. The question before us is the almost unthinkable question of whether Congress wishes to attempt to arrogate to itself the right to tell any person or any group of persons or corporations in any part of this country that they cannot dispose of their property as they see fit. This bill makes no attempt to distinguish a situation where there is no Federal interest, but instead poses a blanket across the broad proposition.

This is the sort of thing wherein if you give 1 inch you have lost the battle. I propose to fight to the last ditch to keep from giving that 1 inch. The House-passed bill is totally unacceptable to me because it gives that 1 inch and more besides. It allows the drastic provisions of this bill to be applicable to all but owner-occupied single-family dwellings or owner-occupied property with not more than four families dwelling therein. Religious, charitable, and educational institutions are also excepted. In other words, the bill that passed the

House of Representatives opens the door. The floodgates would be open. If the House bill should become law, we would have crossed over the line. We would have said that Congress can legislate on this subject irrespective of whether there is an FHA loan or a Federal interest. We would draw an arbitrary line for some reason between four families and five families, and we would exclude real estate agents doing business for owner-occupied property clients but include them if it is shown that the owner is not actually occupying the property. It appears, also, that both the owner and the agent might be included if it is shown that the owner within the past 12 months participated as principal in three or more transactions involving the sale, rental, or lease of any dwelling or any interest therein—page 29, lines 13–18 of H.R. 14765 as passed the House.

These distinctions are both arbitrary and confusing. They are only conducive of trouble. They are discriminatory in themselves and make title IV an example of hypocrisy as well as of unconstitutionality.

The violation of the principle itself is the major wrong, however. The Federal Government has absolutely no right to enter this field. It is purely a field of private endeavor—a field of private and personal rights, and a field which it is not to be expected that the iron fist of the Federal Government will shatter.

As to the Executive order on housing, I have had very definite ideas on this subject for some time as many pages of the CONGRESSIONAL RECORD will attest; see CONGRESSIONAL RECORD, volume 108, part 17, pages 22908–22914; CONGRESSIONAL RECORD, volume 110, part 6, pages 7089–7092; my main speech on this point in the title VI debate of 1964, CONGRESSIONAL RECORD, volume 110, part 6, pages 7557–7574; and my concluding remarks on June 16, 1964, CONGRESSIONAL RECORD, volume 110, part 10, pages 13928–13933. The final action taken on title VI of the civil rights bill of 1964 by no means settled this issue. In the long and important debate on title VI, I made a rather extensive legal and constitutional analysis of the issues. It will be recalled that up until the last amendment was adopted to the then proposed title VI—which authorized the withholding of Federal funds until racial integration was duly certified—I had built up a legislative history in the Senate which clearly excluded FHA and VA housing from the coverage of the bill. This was predicated on the obvious legal situation which ensued once the House of Representatives adopted the Rains amendment excluding contracts of insurance or guarantee from the coverage of the bill. This would have nullified the unconstitutional Executive order on housing issued by President Kennedy. Regardless of the legality or illegality of this order as an attempt at legislation by executive or regulatory power, Congress at that point had preempted the field and had elected to exclude FHA and VA housing from forced racial integration.

Finally in the last stages of the debate in the Senate, the Ribicoff amendment was adopted to the effect that nothing in the 1946 act would take away from or add anything to the legality of the Executive order on housing.

This vitiated the preemption language of the bill which would have nullified the Executive order, but it left the order merely where it stood as related to FHA and VA before the 1964 act. To my mind that leaves it on very unsound constitutional grounds with a long background of Congress, the only branch of the Government with a legislative right to speak on this subject, having rejected time and again the Powell, Javits, and other amendments to accomplish this same purpose.

Following President Johnson's assumption of the Presidency, the conventional market faced a long period of uncertainty as to attempted governmental control of racial matters in housing because various groups petitioned the White House to expand the Executive order of 1962 to cover practically the entire conventional market. Governor Lawrence's Committee on Equal Opportunity in Housing went into this question at considerable length and recommended that the order be expanded. The means or proposed excuse for expansion, as I understood it, was through all banks insured by the Federal Deposit Insurance Corporation, both State and Federal, and all savings and loan associations insured by the Federal Savings and Loan Insurance Corporation. This, of course, would have covered a greater part of the conventional market.

Having had serious and well-founded doubts about the legality of President Kennedy's order, I had all the more grounds of opposition to this proposed act of legislation on the part of the President. The decision of the President against issuing this order was a sound one in my opinion, because he clearly lacks the authority to issue it.

I feel that the present bill is the result of this decision because the President decided to pass the matter on to Congress. He has not passed on to the Congress, however, what was before him for action. Instead he has made a request for an all-out blanket Federal fair housing law, applicable to all property owners irrespective of whether there is any Federal interest in their property.

Whereas I felt that the President did not have authority to issue what was proposed to him, I now feel that Congress does not have authority to do what he proposes. Moreover, if Congress should have this authority, I believe that it would be most unreasonable to exercise it. To add to the intensity of this situation, the President has made the question of fair housing only one title of another sweeping and ill-advised civil rights bill that should be defeated in its entirety.

The only other reference to law and authority which the President made in his message to Congress of April 28, 1966, was in a broad and general sense which reads as follows:

> I propose legislation that is constitutional in design, comprehensive in scope and firm in enforcement. It will cover the sale, rental and financing of all dwelling units. It will prohibit discrimination, on either racial or religious grounds, by owners, brokers and lending corporations in their housing commitments.

In referring to enforcement, the President stated that the bill will be "firm in enforcement." In other words, it is the intent of the drafters of this bill to provide a harsh and firm enforcement measure. That thought is certainly reflected in the blanket authority for the Attorney General to file suits for school desegregation, which could result in countless school lawsuits in any and all regions of the Nation wherein the authorities in Washington desired to cause more trouble. The enforcement thoughts of the administration are reflected also in the rigid penalties against interference with civil rights workers as provided in title V.

We must take the President at his word also as to enforcement intended in title IV for fair housing. While I doubt that this title could be enforced if it became law, I nevertheless recognize the intent for enforcement that was expressed and warn against it. The amount of lawsuits by individuals and the Attorney General to block otherwise usual private sales of property and suits for damages that could and might be brought under this bill are difficult to predict. To say the least, they may be numerous and they have a dangerous potential of harassing property owners and of casting clouds on titles to real property. Actions by the proposed Fair Housing Board also might be quite numerous and harassing for property owners.

I now turn to the President's reference to constitutionality regarding title IV. He stated in his April 28 message:

> I propose legislation that is constitutional in design.

And that is all that he said about constitutionality. In his previous general message to Congress in January, the President stated that he wanted fair housing legislation based on the broadest constitutional authority. These broad general references to constitutionality without any mention of where, how, and why, appear to me to be bold fronts for doubtful constitutionality in the hope that Congress will enact the legislation and lend its stamp of approval to the constitutionality issue.

The Attorney General in his testimony at the House and Senate hearings seemed to feel that Congress has authority under the commerce clause and the 14th amendment. I take sharp issue with the Attorney General regarding real estate being an item in commerce. As to the 14th amendment, I point out that one of the possible indications from the Supreme Court that the 14th amendment could be extended to the acts of individuals, without the necessity for determining any level of State action, was in a dictum in a concurring opinion in United States against Guest decided March 28, 1966, more than 2 months after the President advised Congress that this legislation would be sought. This was only a dictum and not a holding, and if it is to become law it would overturn a century of Supreme Court decisions on this point

including the expressed intent of Congress and the States in the language of the 14th amendment.

Let us therefore go back to some fundamental values and reasoning in our constitutional legal thinking. In this regard, I can think of no better source than Chief Justice John Marshall.

JOHN MARSHALL'S ADMONITION

John Marshall of Virginia was our fourth Chief Justice serving from 1801 to 1835, a very long period of 34 years. Without a doubt, he was one of the great legal and constitutional law scholars of all time. He, like Thomas Jefferson, studied under Chancellor George Wythe at the College of William and Mary, although he did not always agree with Jefferson's actions in public life. Marshall raised the prestige and power of the Supreme Court and in many respects molded the Constitution. He is hailed as the father of the right of the Supreme Court to review State and Federal laws and pronounce final judgment on their constitutionality. Marshall viewed the Constitution both as a precise document setting forth specific powers and as an instrument which could be interpreted somewhat liberally to give the Federal Government the means to act effectively within its limited sphere. In this sense he opposed the States rights doctrine and was criticized for it. Accordingly, he is a most appropriate and powerful authority to quote against the bill which is now proposed and which is perhaps the most severe attempt yet made to expand Federal power.

The case of *Gibbons* v. *Ogden*, 9 Wheat 1, 22 U.S. 1 (1824), is cited freely as one of the great cornerstones of the power of Congress to regulate commerce. Marshall as Chief Justice wrote the opinion in this case. At page 206 he stated:

> Individuals who own lands, may, if not forbidden by law, erect on those lands what buildings they please; but this power is distinct from that of regulating commerce.

Therefore, we have the words of John Marshall himself telling us directly and clearly that the power to regulate commerce is completely distinct from real property matters. He tells use that an individual can erect buildings on his land as he pleases and the commerce clause of the Constitution can't be used against him because real property matters and the rights of ownership are not subject to regulation by the commerce clause.

In one stroke of the pen John Marshall answers this question for us and he treats the matter as a foregone conclusion. In so doing, he reflects the time-honored theory, handed down to us through the centuries in both common and statutory law back to the statute of "quia emtores" far back in English history—in the year 1290—establishing fee simple titles and the principle of alienation which led to the saying that a man's home is his castle.

Marshall also recognized in the above quotation the power of State governments to forbid or regulate the construction of buildings on land. He distinguished this quickly, however, from the power of Congress under the commerce clause and said that in no sense were they related. State powers in this field extend into everyday real property life quite extensively. Local zoning laws determine whether commercial or residential structures can be built on various properties, and these laws have quite an effect on the marketability of real estate. This power, however, as Marshall clearly recognized, was reserved to the States and was not delegated to the Federal Government in the express, or "limited" powers as Marshall called them, which are possessed by the Central Government.

In Gibbons against Ogden, Marshall discussed the commerce clause of the Constitution with clarity and in detail. It would be wise for us here today to consider his words and grasp the true meaning of what power Congress really possesses in this field. We have heard the expression that almost anything is commerce when it is defined in the terms of the power of the Federal Government. I do not believe that this is true and I am sure that if we adhere to John Marshall's clearly written and distinct definition this is not true. Marshall, in discussing the language of the Constitution, stated—22 U.S. at page 188:

> The words are "Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes." The subject to be regulated is Commerce and our Constitution being as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word . . . Commerce undoubtedly is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse.

The language quoted above is clear and concise. Chief Justice Marshall said that commerce was more than traffic but that it undoubtedly include traffic. Commerce, he said, was intercourse. Bear in mind that this definition was given in the same opinion in which he stated by dictum that real estate and ownership use were not commerce.

Real property is permanent. It does not move. How can it in and of itself become an item in commerce unless and until a part of it, such as iron ore, is removed and placed on railroads, in trucks or in ships and moved across State lines or to a foreign nation? The whole proposal that the mere ownership of real property subjects an individual to Federal regulation under the commerce clause ipso facto, is ridiculous. If the matter were brought before John Marshall, the real founder of our system and body of law, I daresay that he would throw the moving party litigant out of court promptly as though it were an insult to his intelligence.

There is another part of Marshall's opinion in Gibbons against Ogden which I wish to call especially to the attention of the Senate. It deals with the real responsibility of Congress to consider thoroughly and wisely the use of the commerce power. I do not mean by this that Congress has the power in this instance, but if we assume that it does, then there is a tremendous responsibility in the wisdom and discretion of Congress which should be shouldered and thought out carefully before exercising the power. Marshall made this quite clear at page 197 of his opinion when he stated:

> We are now arrived at the inquiry—what is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution. These are expressed in plain terms, and do not affect the questions which arise in this case, or which have been discussed at the bar. If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several states, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments. The power of Congress, then, comprehends navigation, within the limits of every state in the Union; so far as that navigation may be, in any manner, connected with "commerce with foreign nations, or among the several states, or with the Indian tribes." It may of consequence, pass the jurisdictional line of New York and act upon the very waters to which the prohibition now under consideration applies.

In other words, Marshall is saying that if the commerce power extends into a certain area, use it wisely because it is an absolute and arbitrary power. Too often we hear debates in the Senate on constitutionality that reach the stage wherein the proponents of legislation leave the impression that if the proposal is constitutional, it should pass. This must always be refuted by calling attention to the primary responsibility of Congress; namely, to determine whether something is good or bad for the country.

Remember Marshall's words:

> The wisdom and the discretion of Congress, their identity with the people and the influence which their constituents possess at elections are . . . the sole restraints on which they have relied to secure them from its abuse.

I repeated John Marshall's words quoted above because they charge the Congress with a solemn responsibility. He was of course speaking about the broad use of the commerce power in a rather clear-cut case. His argument would have even a stronger application in a case of doubtful constitutionality. In a case such as title IV of the instant bill where, in my opinion, constitutionality is definitely lacking, his words are practically a mandate to the Senate to defeat it. I would add to this that we should defeat the whole bill—juries, schools, a new Fair Housing Board, and all.

Congress must remember its identity with the people. Marshall said that we must not only remember this identity,

but must consider also the influence which our constituents possess at elections. I do not think that Congress needs advice from the Supreme Court about keeping in mind the influence which our constituents have at elections. It is significant, however, that the chief architect of Federal power under the Constitution specifically pointed this out as a warning to Members of Congress in passing or considering legislation that involves a proposed strong use of Federal power.

I feel that by and large a great majority of the people of my State of Alabama are against this bill. I feel also that certainly insofar as title IV is concerned, a large majority of the people of the entire Nation are opposed to it. What has happened with proposed fair housing laws when they have been submitted to the electorate by a referendum? In the main, they have been defeated. The people of the State of California went further than merely to defeat a proposed fair housing law. On proposition 14, which became article I, section 26 of the California constitution, they approved language prohibiting the State from abridging the right of any person to sell or refuse to sell or rent his property as he sees fit. The vote was taken on this referendum on November 3, 1964, and the amendment was approved by a vote of 4,526,460 to 2,395,747, a margin of 2,130,713 votes or a ratio of approval of 2 to 1. This was an overwhelming expression of popular opinion in what is now our largest State by population. It shows how people feel when they fear any interference with their time-honored right to dispose of their property or rent it to people of their own choice.

I should add, since I mentioned proposition 14, that the Supreme Court of California in the case of *Mulkey* v. *Reitman*, 413 Pac. 2d 825 (May 10, 1966), declared this new section of the constitution of California invalid as being State action contravening the 14th amendment of the Constitution of the United States.

On June 10, 1966, however, the Supreme Court of California, with the same Justice Peek writing the opinions in both cases, held in the case of *Hill* v. *Miller*, 415 Pac. 2d 33, that a landlord could serve notice on and oust Negro tenants purely on the grounds that he did not wish to rent to Negroes. In other words, despite Mulkey against Reitman, California property owners may discriminate in the sale or rental of real property when they do not violate the Unruh Civil Rights Act, the Rumford Fair Housing Act, or other legislative enactments which do not apply generally, I believe, to residential property.

I would like to quote from the opinion of Justice Peek in the Miller case cited above because it has a direct application to what we are now considering (415 Pac. 2d 33 at p. 34):

> The facts which plaintiff has alleged show only that defendant has discriminated and intends to further discriminate against defendant and negroes generally in the rental of defendant's residential property. The Fourteenth Amendment does not impose upon the State the duty to take positive action to prohibit a private discrimination of the nature alleged here.

This is an important quotation. The Justice states, and I repeat:

> The Fourteenth Amendment does not impose upon the State the duty to take positive action to prohibit a private discrimination of the nature alleged here.

If this be true as stated only 3 months ago by a justice of the supreme court of the largest State in the United States, then how under any reasoning can Congress be expeced to use the 14th amendment as authority to prohibit the same type of discrimination? The basic subject matter is not only a field of private housing, it is exclusively a State matter. Congress, under the express language of the 14th amendment can enact legislation to prohibit California or any other State from denying its citizens due process of law or the equal protection of the laws by State action, and I emphasize State action, but it cannot enact a fair housing law applicable to private property owners for the State of California. Judging by the way the voters of California feel, as attested in the 1964 proposition 14 vote, it appears that the only way that California can get a rigid fair housing law is through the legislature and not by the most democratic of all methods, popular referendum.

THE COMMERCE CLAUSE AND THE 14TH AMENDMENT

I have made several references thus far to the commerce clause and to the 14th amendment in connection with the general theme of the bad policy of this bill, and the fact that the admonitions of past and present thinking would guide us to kill this bill.

At this point, I would like to pursue an analysis of these provisions of our Constitution still further in a legal sense to show that the bill presents a bad case in these cateogries, on which the sponsors apparently rely. This will be followed if time permits, by a further legal analysis, as well as a policy analysis, to show that title IV is an invasion of property rights and a violation of due process of law.

Mr. President, one of these days we are going to stop expanding the commerce clause of the Constitution for lack of any further excuses to stretch that clause like a rubber balloon, and I believe that in the instant bill we have both the situation and the justification for doing just that. Before tracing some of the expansions of the commerce clause that have occurred for varying reasons—good or bad—I would like to make it clear that I am not satisfied with the "wheat" case which the Attorney General cited in testiying on this bill as an illustration of the power of the commerce clause over real estate.

That case was *Wickard* v. *Filburn*, 317 U.S. 111 (1942). It must be remembered that wheat growing on land is quite different from the land itself. This is true both in fact and at law. Wheat is a seasonal crop that is harvested and flows freely thereafter in interstate and foreign commerce both as a raw product and as a product for the manufacture of flour and other commodities. Once it is severed from the land it is most definitely an item of personal and not real property. A decision regarding wheat in my opinion is not a valid decision on the fee simple title to the land underneath it. Moreover, before the Supreme Court rendered this decision, the constitutional question had been resolved already that Congress had the power to regulate the production of wheat in order to stimulate trade in wheat at increased prices. This was a part of a reverse trend by the Supreme Court in applying the doctrine of Federal control over agricultural commodities after a series of decisions declaring many of the early enactments of Congress in the first term of the late President Franklin D. Roosevelt unconstitutional. Among these prior decisions was the famous Schecter Poultry Co. case often called the "sick" or "dead" chicken case.

Changes in the personnel of the Court brought a more liberal view of the Constitution and hence the line of decisions began to build up in favor of Federal control over agricultural production of crop items. The basic question involved in the Wickard against Filburn case was a violation of a Federal acreage allotment and more specifically whether disregarding the allotment would or could have an effect on interstate commerce.

The Attorney General seemed to place emphasis on the fact that all of the wheat was consumed on the farm for livestock or other purposes in this case, and that therefore there is an analogy to the land and home ownership to be drawn from the case.

The opinion of the Court itself answers the Attorney General on this point and refutes his argument directly. I quote (317 U.S. 111 at p. 128):

> One of the primary purposes of the Act in question was to increase the market price of wheat, and to that end to limit the volume thereof that could affect the market. It can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions. This may arise because being in marketable condition such wheat overhangs the market and if induced by rising prices, tends to flow into the market and check price increases. But if we assume that it is never marketed, it supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market.

In other words, the Supreme Court said in this case that the wheat itself being used as a commodity for home consumption and livestock feeding kept the farmer from going into the stream of interstate commerce and purchasing wheat at prices which were of great concern to the Government.

At no point in this case did I find a holding or a dictum that would indicate that the Court felt that under the commerce clause Congress could take jurisdiction over the title to the land itself. The question of growing a commodity which, right or wrong, is subject to regulation, is entirely separate from the right of a landowner to pick and choose as he sees best the people to whom he sells his land.

I am glad that the Attorney General mentioned this case so that it can be

distinguished. At the same time it illustrates how desperate the administration is for precedents for the drastic action which has been proposed.

I am glad that this case was brought up for another reason as well. It contains a statement by Mr. Justice Jackson, who wrote the opinion to which there was no dissenting opinion, that may well be considered by us here today. In commenting on some previous decisions of the Court holding that mining production or certain types of manufacturing that are strictly "local" cannot be regulated under the commerce power because their effects in interstate commerce are only indirect, Mr. Justice Jackson stated—at page 120:

> Even today when this power has been held to have great latitude, there is no decision of this Court that such activities may be regulated where no part of the product is intended for interstate commerce or intermingled with the subjects thereof.

This is an important quotation because land is land, and we in this bill are not talking about anything but the sale or rental of that land and the structures on it which when affixed to the land become a part and parcel of it both in fact and at law. I would ask the simple question—where can land be intended for interstate commerce? There is no logical answer that it is. If the flooring and water pipes of a house are torn out when a building is razed and collected by resale merchants for shipment and sale elsewhere, then and at that point, there is a product that might be intended for interstate commerce. So long, however, as these pipes and flooring are affixed to the house and land, they are part of the realty.

Moreover, and I emphasize this, the bill as it was sent up to both the Senate and the House contained a definition—at page 25, line 19, of S. 3296—that a "dwelling" included, and I quote: "any vacant land that is offered for sale or lease for the construction or location of any such building, structure, or position thereof."

This shows the all-encompassing intent of the drafters of the bill to take in all land in one fell swoop. The House deleted the vacant land provision and restricted the bill to "dwellings," which word, under definitions in the present bill, has a broad meaning.

The bill in its entirety is a bad bill, and I could discuss it, if permitted, in considerably more detail.

Mr. President, at this stage we are nearing the time when we shall vote again on cloture of debate on the motion to take up the House-passed Civil Rights Act of 1966, H.R. 14765. I was pleased that the first attempt at cloture, on last Wednesday, failed to receive the necessary two-thirds vote of Senators present, and I see no reason to expect an increase in the votes for cloture today.

I shall vote against cloture, consistent with my practice and my legislative philosophy. The Senate quite properly rejected a petition for cloture a few days ago, and I am confident that it will do so again.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. HART. Mr. President, I yield myself 10 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Michigan [Mr. HART] is recognized for 10 minutes.

Mr. HART. Mr. President, last week during our discussion of the Civil Rights bill of 1966, I placed in the RECORD a copy of a letter signed by 26 of the Nation's outstanding professors of constitution and public law. This letter was circulated by the distinguished professor of law at the University of Chicago School of Law, Prof. Soia Mentschikoff.

Since placing that letter in the RECORD, Professor Mentshikoff has written to me that an additional 15 professors and deans of schools of law have indicated that they wish to join in signing this letter.

I ask unanimous consent that there be printed at this point in my remarks the letters which Professor Mentschikoff and these several professors and deans have signed supporting the constitutionality of title IV, the housing section, of the bill.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE UNIVERSITY OF CHICAGO, THE LAW SCHOOL,
Chicago, Ill., September 14, 1966.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: Each of the teachers of constitutional or public law whose name appears at the end of the enclosed letter has authorized me in writing to include him as a signer. There would be more signatures, but a number of teachers who would undoubtedly join have been and remain away from their offices on vacation. As I hear from additional people, I will forward their names to you,

Sincerely yours,
SOIA MENTSCHIKOFF,
Professor of Law.

Enclosure.

AUGUST 29, 1966.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: The undersigned are teachers of constitutional or public law in law schools located in various sections of the country. Since the introduction last May of the proposed "Civil Rights Act of 1966" (H.R. 14765, S. 3296), which in Title IV would ban discrimination on account of race, color, religion, or national origin in the sale, rental and financing of residential housing, we have followed with interest the debate over the constitutionality of the housing provisions. It is our opinion that Title IV is constitutional, that authority for its enactment can be found in both the Commerce Clause and Section 5 of the Fourteenth Amendment as recently construed by the Supreme Court, and that neither the Due Process Clause nor any other provision of the Constitution forbids it.*

In the hearing before the Senate Subcommittee on Constitutional Rights and Subcommittee Number 5 of the House Judiciary Committee, facts were presented tending to show, and on the basis of which the Congress should reasonably find, that—

When persons are prevented from buying or renting housing because of their race, color, religion or national origin, the amount of housing being sold or rented, and therefore the amount being constructed, is reduced, which in turn significantly reduces the quantity of building materials moving across state lines;

Lenders of funds for residential housing construction and rehabilitation are frequently located outside the state where the construction and rehabilitation takes place, and the interstate flow of such financing is impeded by discriminatory practices; and

Businesses of all kinds rely importantly on the movement of labor from state to state, and that movement, too, is impeded, especially with respect to skilled and white collar employees, when adequate housing is denied because of race, color, religion or national origin.

We believe that if Congress were to conclude that these and other effects of discrimination on interstate commerce justify the enactment of Title IV, the courts would defer to that Congressional judgment and sustain the statute. That result seems to us to follow from *Katzenbach* v. *McClung*, 379 U.S. 294, 303–304 (1964), where the Court in upholding the validity of the public accommodations sections of the 1964 Act said:

". . . Congress has determined for itself that refusals of service to Negroes have imposed burdens both upon the interstate flow of food and upon the movement of products generally. Of course, the mere fact that Congress has said when particular activity shall be deemed to affect commerce does not preclude further examination by this Court. But where we find that the legislators, in light of the facts and testimony before them, have a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end."

We also believe that Section 5 of the Fourteenth Amendment provides additional support for Title IV. We concede that a racially discriminatory refusal to sell or rent a dwelling to a Negro would not be found by the courts to violate the Fourteenth Amendment standing alone; but the Supreme Court has held that the power of Congress to implement the Amendment is not restricted to doing only what the courts would do in the absence of federal legislation. In *Morgan* v. *Katzenbach*, 384 U.S. 641 (1966), the court considered and rejected the argument (made with respect to the provision of the Voting Rights Act of 1965 banning New York's English-language literacy test) that the federal law "cannot be sustained as appropriate legislation to enforce the Equal Protection Clause unless the judiciary decides—even with the guidance of a congressional judgment—that the application of the English literacy requirement prohibited by the federal law is forbidden by the Equal Protection Clause itself. We disagree. A construction of § 5 that would require a judicial determination that the enforcement of the state law precluded by Congress violated the Amendment, as a condition of sustaining the congressional enactment, would depreciate both the congressional resourcefulness and congressional responsibility for implementing the amendment."

On this reasoning the Court said the question before it was whether, "Without regard to whether the judiciary would find that the Equal Protection Clause itself nullifies New York's English literacy requirement as so applied, . . . Congress [could] prohibit the enforcement of the state law by legislating under § 5 of the Fourteenth Amendment." The question was answered in the affirmative.

Thus, we believe that Congress can properly consider whether it should exercise its power under the Amendment to eliminate

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* We understand that the bill was amended to add to the forbidden grounds of discrimination, "the number of children or the age of such children." We express no opinion on the constitutionality of the amendment.

housing discrimination where there is evidence showing that in the past such discrimination has been fostered by state laws and state enforcement of racially restrictive covenants and even by policies of federal housing agencies—actions which Congress might reasonably believe so fixed housing patterns that the effects are felt to this day. If Congress so concluded it would not matter that the title would reach private conduct in uprooting the effects of past governmental action. See *Morgan* v. *Katzenbach, supra; United States* v. *Guest*, 383 U.S. 745; *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715; *Evans* v. *Newton*, 382 U.S. 296.

Some have argued that Title IV would unconstitutionally deprive owners of their property without due process of law, but there is no merit to this objection. See *Atlanta Motel* v. *United States*, 379, 241, 258–560 (1964), where precisely the same point urged against the 1964 Act was rejected by the Court. See also *Bob-Lo Excursion Co.* v. *Michigan*, 333 U.S. 28, 34 & n. 12 (1948); *Massachusetts Commission* v. *Colangelo*, 182 N.E. 2d 595; *Burks* v. *Poppy Const. Co.*, 57 Cal. 2d 463, 20 Cal. Rep. 609, 370 P. 2d 313; *Colorado Commission* v. *Case*, 151 Colo. 235, 380 P. 2d 34; *Levitt & Sons* v. *Division Against Discrimination*, 31 N.J. 514, 158 A. 2d 177, *appeal* dismissed, 363 U.S. 418; *Jones* v. *Haridor Realty Co.*, 37 N.J. 384, 181 A. 2d 481.

It is, therefore, our conclusion that the Congress is free to consider whether to enact Title IV as a matter of policy, confident that it is constitutional.

Sincerely,

Robert F. Drinan, S.J. (Dean), Boston College Law School; Ira M. Heyman (Dean), Sanford H. Kadish, University of California School of Law (Berkeley); Geoffrey C. Harzard, Philip B. Kurland, Soia Mentschikoff, University of Chicago Law School; Louis Lusky, Telford Taylor, Columbia University School of Law; Melvin G. Shimf, William W. Van Alstyne, Duke University School of Law; Fletcher N. Baldwin, Jr., Stanley K. Laughlin, Jr., University of Florida College of Law; Jefferson B. Fordham (Dean), John Honnold, University of Pennsylvania Law School; Paul A. Freund, Harvard University Law School; Lawrence R. Velvel, Paul Wilson, University of Kansas School of Law; William B. Lockhart (Dean), University of Minnesota Law School; Ivan C. Rutledge (Dean), Ohio State University College of Law; Samuel D. Thurman (Dean), University of Utah College of Law; Donald A. Giannella, Harold Gill Rauschlein (Dean), Villanova University School of Law; Robert O. Dawson, Jules B. Gerard, Hiram H. Lesar (Dean), Frank W. Miller, Washington University School of Law.

THE UNIVERSITY OF CHICAGO,
THE LAW SCHOOL,
Chicago, Ill., September 14, 1966.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: This morning I received authorization to add the following names to the letter on constitutionality, dated August 29, 1966:

Jefferson Barnes Fordham (Dean), John Otis Honnold, Jr., University of Pennsylvania Law School.

C. Dallas Sands, University of Alabama School of Law.

Since I will be out of town for a few days it may be that I will not be able to send you the other signatories as they come in, but I will keep you informed.

Sincerely yours,

SOIA MENTSCHIKOFF,
Professor of Law.

THE UNIVERSITY OF CHICAGO,
THE LAW SCHOOL,
Chicago, Ill., September 17, 1966.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: I have just received authorization from four additional teachers to have their signatures added to the letter of August 29, 1966, on the constitutionality of Title IV of the proposed Civil Rights Act of 1966. The names are as follows:

John W. Wade (Dean), Vanderbilt University Law School.

Michael D. Vevito, Gerald L. Kock, Albert M. Witte, Emory University Lamar School of Law.

If I receive additional names I will forward them to you.

Sincerely yours,

SOIA MENTSCHIKOFF,
Professor of Law.

THE UNIVERSITY OF CHICAGO,
THE LAW SCHOOL,
Chicago, Ill., September 16, 1966.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: The following have authorized me to state that they would like to have their signatures added to the letter on the constitutionality of Title IV of the Civil Rights Act of 1966:

Fred Cohen, Carl H. Fulda, George Schatzki, James A. Treece, Joseph P. Witherspoon, University of Texas Law School.

Hardy C. Dillard, Dean, Thomas F. Bergin, John Moore, Roy Schotland, University of Virginia School of Law.

Francis A. Allen, Dean, Yale Kamisar, University of Michigan Law School.

Alexander Bickel, Yale University Law School.

There may be more signatures as more people return.

Sincerely yours,

SOIA MENTSCHIKOFF,
Professor of Law.

Mr. HART. Mr. President, it will be noted that the additional signers include the dean of the Vanderbilt University Law School, the Emory University Lamar School of Law, the University of Texas School of Law, the University of Virginia School of Law, as well as the Schools of Law of Yale, Michigan, and other institutions of equal caliber.

Mr. President, Senator JAVITS and I have received over the weekend a strong and persuasive letter from 17 most prominent members of the Nation's bar urging enactment of the Civil Rights Act of 1966, and supporting the constitutionality of the provisions of the bill, especially the provisions of title IV.

I would quote one section of their letter which I believe bears on the key question before the Senate today on the question of whether we should proceed to debate the pending civil rights bill that has passed the House:

Our free society is committed to the rule of law. If the rule of law is to prevail, the law itself must recognize and correct injustice before its victims conclude that the law will not protect them, and turn in desperation to other solutions. Despite great steps taken by the Congress in recent years, the law does not yet condemn many deep injustices still being inflicted on the Negro American.

The vital battle is not the one being fought between the extremists on each side who are eager to do violence to one another. The battle that counts is the continuing one between the extremists on both sides and the moderates on both sides, the battle between the idea of force and the idea of law. This is a battle that a nation dedicated to the rule of law cannot afford to lose.

I ask unanimous consent that the text of this letter to Senator JAVITS, and myself, and the memorandum accompanying the letter, be printed at this point in my remarks.

There being no objection, the letter and memorandum ordered to be printed in the RECORD are as follows:

SEPTEMBER 17, 1966.

DEAR SENATOR HART AND SENATOR JAVITS: When the Civil Rights Act of 1964 was before the Senate, many of the undersigned lawyers responded to the request of Senators HUBERT HUMPHREY and THOMAS KUCHEL, as the Senate leaders sponsoring the bill, for advice as to the constitutionality of the bill in the light of the challenges raised at that time.

Now that the proposed Civil Rights Act of 1966 has come before the Senate and faces a similar constitutional challenge, you have asked, as the respective Democratic and Republican floor leaders supporting the bill, for our opinion as to the constitutionality of the present bill.

We attach hereto a brief memorandum setting forth our reasons for concluding that all six titles of the bill are constitutional.

Without expressing a view as to every detail of the bill, we would add these comments. Our free society is committed to the rule of law. If the rule of law is to prevail, the law itself must recognize and correct injustice before its victims conclude that the law will not protect them, and turn in desperation to other solutions. Despite the great steps taken by the Congress in recent years, the law does not yet condemn many deep injustices still being inflicted on the Negro American.

The vital battle is not the one being fought between the extremists on each side who are eager to do violence to one another. The battle that counts is the continuing one between the extremists on both sides, the battle between the idea of force and the idea of law. This is a battle that a nation dedicated to the rule of law cannot afford to lose.

Sincerely yours,

Bruce Bromley, Warren Christopher, Lloyd N. Cutler, Norris Darrell, William B. Lockhart, Burke Marshall, William H. Orrick, Jr., Louis H. Pollak, Charles S. Rhyne, Samuel I. Rosenman, Eugene V. Rostow, Bernard G. Segal, Harrison Tweed, John W. Wade, James C. Dezendorf, Erwin Griswold, Charles P. Taft.

IDENTIFICATION OF SIGNATORIES

Bruce Bromley, Cravath, Swaine & Moore, New York City. Former Judge, New York State Court of Appeals.

Warren Christopher, O'Melveny & Myers, Los Angeles, California. Recently Vice Chairman, McCone Commission on the Watts Riots.

Lloyd N. Cutler, Wilmer, Cutler & Pickering, Washington, D.C. Former President, Yale Law School Association.

Norris Darrell, Sullivan & Cromwell, New York City. President, American Law Institute.

William B. Lockhart, Minneapolis, Minnesota. Dean University of Minnesota Law School.

Burke Marshall, Bedford Village, New York. Former Assistant Attorney General of the United States.

William H. Orrick, Jr., Orrick, Dahlquist, Herrington & Sutcliffe, San Francisco, California. Former Assistant Attorney General of the United States.

Prof. Louis H. Pollak, New Haven, Connecticut. Dean, Yale Law School.

Charles S. Rhyne, Rhyne & Rhyne, Washington, D.C. Former President, American Bar Association.

Samuel I. Rosenman, Rosenman, Colin, Kaye, Petschek & Freund, New York City. Former President, Association of the Bar of the City of New York.

Prof. Eugene V. Rostow, New Haven, Conn. Former Dean, Yale Law School.

Bernard G. Segal, Schnader, Harrison, Segal & Lewis, Philadelphia, Pennsylvania. Treasurer, American Law Institute. President, American College of Trial Lawyers.

Harrison Tweed, Milbank, Tweed, Hadley & McCloy, New York City. Chairman of Council and Past President, American Law Institute. Chairman, ABA–ALI Joint Committee on Continuing Legal Education.

Prof. John W. Wade, Nashville, Tennessee. Dean, Vanderbilt University Law School.

James C. Dezendorf, Portland, Oregon, past president of the National Conference of Commissioners on Uniform State Laws.

Erwin Griswold, Dean of Harvard Law School.

Charles P. Taft, Former Mayor of Cincinnati, Ohio, Cincinnati, Chairman of the Fair Campaign Practices Committee.

MEMORANDUM ON THE CONSTITUTIONALITY OF THE PROPOSED CIVIL RIGHTS ACT OF 1966, SEPTEMBER 17, 1966

This memorandum considers the constitutionality of the proposed "Civil Rights Act of 1966," which was passed by the House of Representatives on August 9, 1966, and which is currently before the Senate. Since the bill was originally introduced in the Congress last spring, certain questions have been raised concerning the constitutionality of the proposed Act, particularly Title IV, which would outlaw discrimination in the sale, rental and financing of residential housing.

In our judgment, the provisions of the proposed Act are constitutional. This memorandum summarizes briefly the bases for our views as to the constitutionality of Titles I through VI of the Act, as passed by the House of Representatives with amendments proposed by ten members of the Senate Judiciary Committee in their statement of September 6, 1966.[1]

TITLE I—FEDERAL JURIES

Title I of the bill would prescribe a uniform system for the selection of jurors in the Federal court that would assure that Federal juries represent a broad cross section of the community in terms of race, color, religion, sex, national origin and economic status. The title designates a uniform source of names from which potential jurors are to be taken and prescribes detailed procedures for each subsequent step in the selection process. The title also provides a ready means for determining whether the Federal jury officials are complying with its provisions.

The Congress has plenary power to prescribe procedural rules for the Federal courts, including procedures governing the selection of grand and petit juries. The provisions of Title I are authorized by clauses 9 and 18 of Article I, section 8 of the Constitution, which grant Congress the power to "constitute Tribunals inferior to the Supreme Court" and to "make all Laws which shall be necessary and proper for carrying into Execution" that power. See *Wayman* v. *Southard*, 10 Wheaton 1, 22; *Beers* v. *Haughton*, 9 Pet. 329, 360. The provision of the Civil Rights Act of 1957 which eliminated the requirement that Federal jurors be qualified to serve as jurors under the laws of the State in which the Federal court sits was enacted pursuant to this authority and has been upheld. ***United States* v. *Wilson***, 158 F. Supp. 442 (M.D. Ala.), *affirmed*, 255 F. 2d 686 (C.A. 5), *certiorari denied*, 358 U.S. 865. Moreover, Title I is consistent with the constitutional requirements that Federal juries be impartial and represent a fair cross section of the population of the area from which they are drawn. See *Thiel* v. *Southern Pacific Railway*, 328 U.S. 217, 220.

TITLE II—STATE JURIES

Title II of the proposed Act is designed to eliminate all forms of unconstitutional discrimination in the selection of jurors in State courts. To accomplish these objectives, the title contains four principal features. *First*, it prohibits discrimination in State jury selection on account of race, color, religion, sex, national origin or economic status. *Second*, it authorizes the Attorney General to initiate civil proceedings for preventive relief against such discrimination and sets forth specific kinds of effective relief that the courts would be authorized to grant after a finding of discrimination. *Third*, it provides discovery procedures designed to facilitate determinations of whether jury discrimination has occurred. *Fourth*, it requires State jury officials to preserve the records that they prepare or obtain in the course of their duties for a period of four years.

It is established that defendants and civil litigants in State cases triable by jury are entitled to a jury selected without discrimination on account of race, color, or national origin. *Strauder* v. *West Virginia*, 100 U.S. 303; *Hernandez* v. *Texas*, 347 U.S. 475. See also, 18 U.S.C. 243. More recently, the courts have held that the Fourteenth Amendment bars a State from excluding persons from jury service on account of sex or religious belief. *White* v. *Crook*, 251 F. Supp. 401 (M.D. Ala.); *Schowgurow* v. *Maryland*, 213 A. 2d 475. The Supreme Court's recent decision invalidating the Virginia poll tax as a denial of equal protection of the laws (*Harper* v. *Va. State Board of Elections*, 383 U.S. 663) supports the view that the States may not follow jury selection procedures which exclude persons on account of economic status. See also, *Labat* v. *Bennett*, No. 22218, C.A. 5, 1966.

Thus, the prohibition of discrimination in Title II is for the most part a statutory declaration of what the Constitution itself requires. Beyond that, in the recent decision upholding Section 4(e) of the Voting Rights Act of 1965 (which invalidates the New York English-language literacy requirement as a prerequisite to voting) the Supreme Court expressly held that Congress, under Section 5 of the Fourteenth Amendment, has considerable latitude in defining the substantive scope of the Equal Protection Clause. *Katzenbach* v. *Morgan*, 384 U.S. 641. In our view the prohibition of discrimination in Title II, particularly in light of the *Morgan* decision, is well within the power of Congress to enforce the equal protection of the laws.

The provisions of Title II authorizing the Attorney General to bring suit against discrimination in State jury selection are plainly valid. Congress has previously granted the Attorney General such authority in the areas of voting, employment, public schools and facilities, and places of public accommodation. The comparable provision of the Civil Rights Act of 1957 has been sustained by the Supreme Court. See *United States* v. *Raines*, 362 U.S. 17. See also, *United States* v. *Mississippi*, 380 U.S. 128.

Section 203 of Title II, which spells out various kinds of relief that the courts would be authorized to grant following a finding of discrimination, raises no Constitutional questions. The Federal courts would have the power to grant such relief under general equitable principles in the absence of express statutory authority. *Louisiana* v. *United States*, 380 U.S. 145; *White* v. *Crook*, *supra*; *Mitchel* v. *Johnson*, No. 649 E M.D. Ala., 1966.

The provision of Title II requiring State jury officials to provide a description of their selection practices and, where there is evidence that discrimination may have occurred, placing upon the State jury officials the responsibility of showing that discrimination did not occur are likewise appropriate and, therefore, valid legislation under Section 5 of the Fourteenth Amendment. The due process and equal protection clauses of the Fourteenth Amendment govern numerous aspects of State judicial proceedings even in the absence of implementing legislation. See *e.g. Gideon* v. *Wainwright*, 372 U.S. 335; *Griffin* v. *Illinois*, 351 U.S. 12; *Jackson* v. *Denno*, 378 U.S. 368. Under the Supreme Court cases, where a defendant proves a *prima facie* case of discrimination in State jury selection procedures, the burden shifts to the State to rebut that showing. *Reece* v. *Georgia*, 350 U.S. 85; *Patton* v. *Mississippi*, 332 U.S. 463. The discovery provisions of Title II are reasonable and appropriate Congressional implementations of basic constitutional requirements. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 325–328; *Katzenbach* v. *Morgan*, *supra*.

Similarly, requiring State jury officials to preserve their records is well within the bounds of Congressional power. This requirement is similar to Title III of the Civil Rights Act of 1960, which requires State and local election officials to preserve election records. That statute has been sustained. *Kennedy* v. *Owen*, 321 F. 2d 116 (C.A. 5). See also, *United States* v. *Louisiana*, *supra*.

TITLE III—CIVIL RIGHTS

Injunctive relief

Title III of the bill passed by the House of Representatives would grant the Attorney General fairly broad authority to initiate civil proceedings for preventive relief whenever any person is being denied a Federal right on account of his race, color, religion, or national origin. This title also expressly authorizes such proceedings against persons who interfere with the lawful exercise of the right to speak, assemble, or petition for the purpose of securing recognition of or protection for equal rights without discrimination on account of race, color, religion, or national origin. Proceedings may be initiated either against public officials or private individuals, or both. Aggrieved persons are also authorized to initiate such proceedings in their own behalf.

The authority granted the Attorney General to initiate proceedings under this title against public officials rests upon the same constitutional basis as the provisions of title II authorizing him to proceed against discrimination in State jury selection procedures. The authority to initiate such proceedings against private individuals follows that now granted in the specific areas of voting and public accommodations. Its constitutionality is established by the Supreme Court's recent decision in *United States* v. *Guest*, 383 U.S. 745, where a majority of the Justices agreed that Congress has the power to provide remedies against private interference with the exercise of Federal rights flowing from the Fourteenth Amendment. (Of course, it has long been settled that Congress can reach private action in the exercise of its commerce clause powers and other powers which are not in some way limited to activities involving "state action.")

The same rationale supports the authority granted by this title to private individuals to initiate civil proceedings against private interference with the exercise of Federal rights, including Fourteenth Amendment rights. Actions by private individuals against public officials to enjoin denials of Federal

[1] While all signatories of the latter concur that each title of the bill is constitutional on at least one of the grounds cited herein, they are not unanimous as to every ground cited in support of every title.

rights are already authorized by 42 U.S.C. 1983.

TITLE IV—HOUSING

Title IV of the proposed act outlaws discrimination on account of race, color, religion or national origin in the sale, rental, or financing of residential housing. The Title applies to real estate brokers, agents and other persons in the "business of building, developing, selling, renting or leasing dwellings."

In our judgment, Title IV is sustainable under the Commerce Clause. We also believe that the Title finds support under Section 5 of the Fourteenth Amendment, particularly in light of the Supreme Court's recent ruling in *Katzenbach* v. *Morgan, supra.*

Evidence adduced before the Senate and House Judiciary Subcommittees that held hearings on the proposed Act shows that the housing industry has substantial relationships with interstate commerce and that discrimination in housing burdens and obstructs interstate commerce. The evidence presented to the Subcommittee provides ample basis for a Congressional determination that discrimination in residential housing results in a reduction of the amount of housing that is sold or rented and, consequently, in a reduction in the amount of housing constructed. This in turn affects the quantity of building materials that moves interstate. The evidence also shows that business organizations engaged in the financing of residential housing are frequently located outside the State where the construction of such housing takes place, and that the interstate flow of such financing is obstructed by housing discrimination. Congress would also be justified in concluding that businesses of all kinds depend upon the interstate movement of labor, and that such movement is also impeded—especially with respect to skilled employees—when adequate housing is not available because of discriminatory practices.

In our judgment, if Congress were to find that these and other effects of housing discrimination on interstate commerce afford a justification for Title IV, the courts would not go behind that Congressional judgment. In upholding the public accommodations sections of the 1964 Act, the Supreme Court said (*Katzenbach* v. *McClung*, 379 U.S. 294, 303–304 (1964)):

". . . Congress has determined for itself that refusals of service to Negroes have imposed burdens both upon the interstate flow of food and upon the movement of products generally. Of course, the mere fact that Congress has said when particular activity shall be deemed to affect commerce does not preclude further examination by this Court. But where we find that the legislators, in light of the facts and testimony before them, have a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end."

Numerous other decisions of the Supreme Court support our view that Title IV is sustainable under the Commerce Clause. See, *e.g., Atlanta Motel* v. *United States*, 379 U.S. 241; *Labor Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1; *Wickard* v. *Filburn*, 317 U.S. 111.

The Fourteenth Amendment, standing alone, does not prohibit a private individual from refusing to sell or rent his home to another individual because of his race, religion, or national origin. *Shelley* v. *Kramer*, 334 U.S. 1. But it is now settled that in exercising its power to implement the Fourteenth Amendment, Congress is not restricted to reaching only activities that would be held by the courts to violate the Amendment. In *Katzenbach* v. *Morgan*, referred to above, the Supreme Court rejected the argument that a Federal law—"cannot be sustained as appropriate legislation to enforce the Equal Protection Clause unless the judiciary decides—even with the guidance of a congressional judgment—that the application of the English literacy requirement prohibited by the [federal law] is forbidden by the Equal Protection Clause itself. . . . A construction of § 5 that would require a judicial determination that the enforcement of the state law precluded by Congress violated the Amendment, as a condition of sustaining the congressional enactment would depreciate both congressional resourcefulness and congressional responsibility for implementing the Amendment."

A number of factors support the view that Congress has the power under Section 5 of the Fourteenth Amendment to ban discrimination in residential housing. It is relevant, for example, that the presently deeply entrenched patterns of discrimination in housing appear to be attributable in substantial part to past governmental action, including judicial enforcement of racially restrictive covenants in deeds (prior to the 1948 ruling in the *Shelley* case), past segregation in public housing (see *Detroit Housing Commission* v. *Lewis*, 226 F. 2d 180 (C.A. 6)), and past support for racially restrictive covenants by the Federal government itself. See *Federal Housing Administration Underwriting Manuals for 1935*, 1936 and 1938. Past unconstitutional State action in related areas—such as segregated public schools, facilities, and other areas of public activity—also contributed to the original formation of racially segregated neighborhoods which persist today.

We therefore believe that Title IV derives substantial support from the power of Congress to implement the Fourteenth Amendment.[2]

TITLE V—INTERFERENCE WITH RIGHTS

Title V of the Act is designed to deal with the problem of racial violence in the present-day context. It provides criminal sanctions for racially-motivated forcible interference with persons who seek to engage in nine specified kinds of activities. The areas of protected activity are voting, use of public accommodations, access to public education, public services and facilities, employment, housing, jury service, use of common carriers, and participation in federally-assisted programs. The statute protects not only members of minority groups seeking equal treatment, but also persons who urge or aid them to do so, and persons having duties to afford others non-discriminatory treatment with respect to the areas of protected activity. The statute would apply to interference by either public officials or private individuals.

We believe that Title V, in its several applications, is constitutional. The statute does not rest upon any single source of Congressional power. Rather, the constitutional bases for its various prohibitions depend upon the nature of the activity with respect to which forcible interference is proscribed.

It is clear that Congress may provide criminal sanctions for interference with the exercise of rights arising out of the relationship between the citizen and the Federal Government, or arising from statutes enacted pursuant to Article 1, Section 8, of the Constitution which grants various powers including the power to regulate interstate commerce. See, *e.g., Ex parte Yarbrough*, 110 U.S. 651; *United States* v. *Waddell*, 112 U.S. 76. These sources of Congressional power provide ample bases for the Title's prohibition of interference with such activities as voting in Federal elections, use of interstate carriers, employment, housing and access to public accommodations.

There remains the question whether Congress has the power to prohibit private interference with the exercise of Fourteenth Amendment rights. Such rights include, for example, the right to nondiscriminatory treatment in public schools and facilities. The Supreme Court's decision in *United States* v. *Guest*, 383 U.S. 745, dispels any doubt on this score. Six justices expressly declared that Congress has the power under Section 5 of the Fourteenth Amendment to reach interference with the exercise of the Fourteenth Amendment rights, whether by public officials or private individuals.

TITLE VI—PUBLIC SCHOOLS AND PUBLIC FACILITIES

Title VI of the proposed act (Title III of the bill as introduced) is an amendment to Titles III and IV of the Civil Rights Act of 1964. Those statutes authorize the Attorney General to initiate civil proceedings for desegregation of public facilities and public schools, respectively, under certain prescribed conditions.

As explained above with respect to Titles II and III of the House-passed bill, there is no question that Congress can authorize the Attorney General to bring civil proceedings against denials of Fourteenth Amendment rights. The only constitutional issue presented by Title VI of the Act relates to the authority which the Title would grant the Attorney General to proceed against private individuals who interfere with the exercise of Fourteenth Amendment rights with respect to public schools and facilities. But as we have already shown in our discussion of Titles III and V of the House bill, the recent *Guest* decision makes it clear that Congress can reach private interference with the exercise of Fourteenth Amendment rights.

Mr. HART. Mr. President, lest someone had arrived on this planet from outer space in the last several days he would have asked: What is this all about; what are we up to here; what confronts and confounds the Senate; is it the passage of the civil rights bill? No.

Let us tell our friend from outer space that what we are busy doing today is trying to get the Senate in a position where it will be able to act yea or nay on an issue, which the fellow from outer space, if he had been here for 5 minutes, would have discovered is of enormous concern to the whole society.

That is the problem which confronts the Senate today. Shall we be permitted to begin to work our will on a bill that caused the President to address to us a message months ago, followed within a day by the bill from the Attorney General, followed by many, many days of hearings conducted by committees of both Chambers, following which our coequal body, the House of Representatives, in 12 days of debate—and I have never served in the House of Representatives, but those who have tell me that it is equivalent to 2 months of debate in this body—passed the bill with amendments. That bill was then received here. It is that bill which, for a couple of weeks now, we have asked the Senate to permit us to take up and go to work on.

This is a society which we argue should proceed under the law. The one thing that is essential and critical if our communities are to respect that request and obey that rule is to be sure that the law is responsive to inequities and injustices.

[2] See the attached letter from Professor Archibald Cox, recently the Solicitor General of the United States, further developing this point.

We serve only the fellow who has no desire to see the powder keg dismantled if we prevent the Senate from at least getting to the position where it could say: Yes, we looked at the bill.

There are those in our streets and our country lanes whose purpose is served best by permitting the continuation of conditions which cry out for redress. But we do not serve those voices of moderation who counsel the aggrieved to be patient and to await the orderly course of law each day, notwithstanding the desire of a majority of us to be able to address ourselves to this bill. Again, this body is prevented from taking up the bill. We serve only the fellow whose interest is in persuading arms to be raised and weapons to be taken up if the report goes out: Well, the President talked about this, and the House of Representatives did a lot of things, and sent the bill over, but the Senate has its own special rules. The bill was not beaten in open debate and discussion. There was some parliamentary technique that is responsible for having reached the end of the line this year without having done anything.

Somebody is going to get up and say: Is that any reason for passing the bill, because somebody is going to be angry or will exploit our failure? No, I do not say that is a reason for passing a bill. I say that it is an enormously persuasive reason for permitting the Senate to take up the bill.

I have listened most of the days that have intervened since the motion was made asking that we be permitted to take up the bill. I am not sure whether I was listening to reasons assigned against taking up the bill or against passing the bill. But, in large, there are three or four reasons.

First, there are riots and violence in the streets. There is disorder across the country. You do not pass a law because people are pressuring and rioting. I buy that argument. That is a very poor reason for passing a bill. I argue, of course, that we should pass the bill in spite of the riots, and because it is just, right, and very needful at this hour in history. I do not believe that to be a reason that can be assigned fairly against taking up the bill, and I suggest again today that is all that we are asking to be permitted to do.

Then we are told of the many civil rights bills that have been passed by this body in the last 7 or 8 years, and here is another civil rights bill. It is said, let the dust settle on the earlier bills and see where we stand; review the bidding; that we are feeding the appetite of an insatiable beast if we pass another bill.

We have in the last few years, I am proud to say, passed a number of civil rights bills. I think among other things we can say honestly that the discrimination in places of public accommodation has been reduced substantially. I think that feature of the 1964 bill has worked better than many of us would have predicted. Employment opportunities are opening more widely in many areas, and this is good. Discriminatory use in the management of publicly financed programs has been reduced. I have read recently of no one having to fight his way into a public library in order to get a book.

Included in those earlier bills were actions by Congress seeking to broaden the opportunity of all citizens to cast a ballot.

Here, too, we can see substantial advance, about which we should be grateful.

The ACTING PRESIDENT pro tempore. The time of the Senator from Michigan has expired.

Mr. HART. I yield myself 5 additional minutes.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized for 5 additional minutes.

Mr. HART. A very substantial increase is shown in the voting registration figures in the regions of the country where the problem is most acute. The presence of these voters will be a part of the shadow which will be cast in the years ahead with respect to the selection of public servants and the actions those public servants will take.

There are other areas where we cannot cite such progress. There are other areas where I believe there is clear documentation of continuing injustice. That is why we need another bill. The fact is, our society has been poisoned by the consequences of slavery for a long, long time. It has permeated every facet of our life. We need to apply remedial measures throughout the whole of our society.

Last week, the Senator from Louisiana made the point that, as he reads the papers, the problem is not unique to the South. I said then, and repeat—like Lincoln—that in the North and South alike, there is discrimination. In the South it is more hard nosed. In the North it is a little more sophisticated. But if we are on the receiving end, I am not sure which would be more damaging to the human spirit. Born white, I cannot testify. There are millions of Americans who can.

In the North, we have less of an alibi. We cannot cite history and tradition and geography. We cannot cite any local ordinance that prevents us from serving the man and giving shelter to the family. Let us not wrangle about where it is to be found or the degree of its intensity. Let us agree that no one defends it and that we should all join in eliminating it.

One practical step we can take in that campaign is to permit the Senate today to get the bill up here which is responsive to some of the problems that continue to burden our conscience.

I think we bear this responsibility to the most humble citizen, as well as to the coequal body which spent weeks getting the bill together. Looking at it either way, we owe this obligation and should not be distracted by reading any primary election returns, north, south, east, or west as to whether it is popular or unpopular. Or whether our immediate mail shows that people are upset. This is all interesting, and to the politically sensitive person obviously something that crosses one's mind, but we do not weigh our mail to determine how we vote. We do not tailor our consciences by anticipating next year's election returns.

I read the recent Maryland primary returns to mean that 70 percent of the people of Maryland rejected the "white man's campaign," if we wish to call it that. That is pretty good; 70 percent. I know that we are confronted with traditional competition between principles, both of them valid; namely, a person's right to property and the management of it, which is basic to our tradition.

However, it is also an American dream, a principle of our society, that after working hard, we shall be able to buy a home within our means. Let us, therefore, make that dream available not just to white Americans but to all Americans. The bill does not even go that far.

Mr. President, let me repeat, because there are other Senators who wish to state their opinions with respect to this matter——

The ACTING PRESIDENT pro tempore. The time of the Senator from Michigan has expired.

Mr. HART. I ask unanimous consent to proceed for 2 additional minutes.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized for 2 additional minutes.

Mr. HART. We have made progress. There is much ground to cover. Time will not abide by the minority preventing the majority from seeking to respond in the rather limited fashion which the bill proposes we respond to some of these identified needs.

The final argument we have heard is that provisions of the bill are unconstitutional.

I have entered into the CONGRESSIONAL RECORD the opinions of many nationally recognized and acknowledged experts in the area of constitutional law that the bill is constitutional. This argument repeatedly has been made in this Chamber against civil rights bills in these past few years. Repeatedly the Supreme Court has found the bills constitutional.

Remember, we are not debating the bill. We are asking leave that we may be permitted to consider the bill before the Senate, and demonstrate to those across this country—who do look over our shoulders—that the rule of law indeed is the right road, and that the law is responsive to the concerns, failures, and weaknesses in our society.

This demonstration we shall make today and I hope that we pass the test.

Mr. BARTLETT. Mr. President, will the Senator from Michigan yield?

Mr. HART. I yield 2 minutes to the Senator from Alaska.

The ACTING PRESIDENT pro tempore. The Senator from Alaska is recognized for 2 minutes.

Mr. BARTLETT. Mr. President, I intend to vote for cloture. If the vote were on cloture relating to the bill itself, I am not so certain my vote at this time would be in the affirmative—and I say that as one who has voted for every civil rights proposal to come before this body since I have been a Member. I retain a deep conviction, despite arguments increasingly presented to the contrary, that the right of free expression—unlimited debate, if you prefer it that way—is in

the long term best interests of this Nation. I believe there should be opportunity in one parliamentary body in the world for those who have a case to present it without let or hindrance. The Senate is that body. We tend often these days and incorrectly to equate a filibuster with civil rights, and nothing else. An examination of history will quickly prove the error of any such assumption. It reveals many instances where a determined minority, granted the privileges of this body, prevented hasty action and action later demonstrated to be against the best interests of this country.

But this is not a vote on shutting off debate and thus permitting the civil rights bill itself to come to a vote. It has only to do with whether the bill will formally be brought before the Senate. In my opinion that is quite a different matter, so therefore without hesitancy I shall vote for cloture.

Mr. HART. Mr. President, I think the RECORD should show that the Senator from Alaska [Mr. BARTLETT] came into the Chamber today following a rather serious illness.

Everyone is delighted to see him and grateful that he feels so deeply the issue involved today that he would take this action.

Mr. BARTLETT. I am grateful to my friend, the Senator from Michigan.

Mr. SCOTT. Mr. President, will the Senator from Michigan yield?

Mr. HART. I am happy to yield to the Senator from Pennsylvania.

Mr. SCOTT. Mr. President, it would be politic—as some would say—to keep silent at a time like this, but it would also be wrong.

Therefore, I am going to vote to support the cloture motion.

There are two reasons why the Senate should approve the pending motion.

First, by delaying action on a motion to take up H.R. 14765, we would be denying the Senate an opportunity to debate the bill itself. Adoption of the pending motion in no way gags the Senate. Rather, it would end the dilatoriness taking place over the question of whether we should even take up the bill at all.

Second, despite public disquiet over incidents which have occurred this summer in such places as Cleveland, Omaha, Chicago, and Atlanta, there is a demonstrable need for this bill. One need only cite the recent tragic events in Grenada, Miss., last week in support of titles III—authorizing civil action to protect civil rights—and V—prohibiting interference with constitutional rights. Miscarriages of justice such as the Lemuel Penn murder case and a host of others over the past decade or so underscore the need for enactment of the titles designed to assure the fair operation of our Federal and State jury systems.

While I would have preferred the President to use his existing executive authority to achieve the objective of title IV in the first instance, this title as approved by the other body represents a significant step forward toward the objective of equal access to decent housing.

I think it should be stressed one more time that the President, by executive order, could bring about open housing in 80 percent of housing in this country, whereas the bill would achieve open housing in only about 40 percent.

The failure of the administration to use the stroke of the pen ought not to be used by this administration for the purpose of attacking any person or any Senator of either party who may, in his judgment, feel it necessary to oppose this bill.

While I support the bill, I can only point out that the President could have accomplished more by executive order directly than the bill itself will accomplish in title IV.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. HART. I yield 2 additional minutes to the Senator from Pennsylvania.

Mr. SCOTT. Reluctance of the President to take this step has in itself contributed to the difficulty which this bill has encountered.

So I feel it incumbent upon the Senate to act affirmatively today on the pending cloture motion. Critics and opponents of the civil rights bill will have ample opportunity to debate the merits of the bill in great detail, but let us first give the Senate an opportunity to take up the bill.

I realize that the bill may require amendment for purposes of perfecting it before the Senate finally disposes of it, but first let us give the Senate an opportunity to work its will.

I ask unanimous consent that my remarks may be followed by an analysis of the constitutionality of title IV which was prepared for me.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

"Housing . . . seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay." *U.S. Comm'n on Civil Rights Report, Housing 1961*, p. 1. This memo considers the constitutionality of legislation designed to insure the equal access to housing by all racial groups, beginning with the housing provision in the Civil Rights Act of 1866 and proceeding to the fair housing legislation now before Congress.

I. THE CIVIL RIGHTS ACT OF 1866

A. The act

Federal fair housing provisions have their antecedent in the guarantees incorporated in the Civil Rights Act of 1866 (S. 61 in the 1st Session of the 39th Congress). That Act reads in part as follows:

"That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and *such citizens, of every race and color*, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, *shall have the same right*, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to *inherit, purchase, lease, sell, hold, and convey real and personal property*, and to full and equal benefit of all laws and proceedings for the security of person and property, *as is enjoyed by white citizens*, and shall be subject to like punishment, pains, and penalties. . . ." Act of April 9, 1866, c. 31, § 1, 14 Stat. 27 (emphasis supplied).

Section 2 of the Act made it a misdemeanor for any person acting under color of law, regulation, or custom to deprive persons of any right guaranteed in section 1. To what extent this applied to private actions is unclear, although it appears likely that private persons acting in an area where discrimination was common would be within the scope of the law. The remainder of the Act relates to questions of court jurisdiction and enforcement procedures.

This initial housing provision was virtually re-enacted by the Civil Rights Act of 1870 (16 Stat. 144) and remains law as 42 USCA § 1982 which reads as follows:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

B. Legislative history

The 1866 Civil Rights Act was extensively, and heatedly, debated by Congress before its initial passage; it was subsequently vetoed by President Johnson on constitutional and policy grounds; and that veto was overridden by votes of 33 to 15 in the Senate and 122 to 41 in the House. Debate in both houses focused on the authority of Congress to pass such legislation and the wisdom of particular provisions. Proponents of the legislation found authority for the bill in the second section of the Thirteenth Amendment which empowered Congress to legislate in enforcement of the Amendment's abolition of slavery. According to Senator Lyman Trumbull, sponsor of the bill, the measure was "intended to give effect to that declaration (the Thirteenth Amendment) and to secure to all persons within the United States practical freedom." 71 *Congressional Globe* 474. Supporters of the Thirteenth Amendment also testified that it had been their intention in adopting the Amendment to give Congress the power over the incidents of slavery which the proposed bill exercised. (See e.g. the remarks of Sen. Howard, 71 *Congressional Globe* 503.)

In debate on the merits of the bill, much attention focused on its initial citizenship provision which proponents said was merely declaratory of existing law and opponents attacked as being beyond the power of Congress and as discriminatory against foreign immigrants. In that part of the debate which focused on the rights specifically guaranteed, little consideration was given to the housing provision or any other provision taken singly. Proponents emphasized the need to prevent the passage of a variety of state laws which would deprive freed Negroes of all the normal incidents of freedom, thus re-instituting a condition approximating slavery. The rights guaranteed in Section 1 of the Act were consequently those deemed fundamental and basic by the bill's sponsors, and Blackstone and Kent could be cited as authority for the proposition that the right to hold property was indeed a basic right. However, the extent to which its proponents felt the bill would control discrimination by individuals is not clear from the legislative history of the Act.

Opponents of the bill challenged the broad definition of slavery implicit in this defense and argued that Congress was entitled to act only insofar as legislation was required to prevent the actual re-enslavement of the Negro. It was also argued that the Act was a dangerous precedent, since where rights could be granted, they might also be taken away. Heavy emphasis was placed on the inadvisability, or unconstitutionality, of legislation by the federal government in areas traditionally reserved to the states. The possibility that these guarantees would

in time be extended by judicial interpretation to the political area and ensure Negroes the right of suffrage or that they would overrule state laws on intermarriage was a further source of complaint. But while blanket denunciations were common, no consideration seems to have been given to the greater or lesser wisdom of a guarantee of access to real estate as opposed for instance to a guarantee of the general right to make contracts; presumably in the face of Armageddon, details are of small concern.

C. Judicial interpretation

The constitutionality and application of the Act have been the subject of subsequent court decisions. While it cannot be said in strict accuracy that the Supreme Court upheld the constitutionality of the Act, it has tacitly supported it in various decisions and dicta, and the constitutionality can scarcely be questioned.

In *United States* v. *Cruikshank*, 25 Fed. Cas. 707 (Case #14897, C.C., D. La., 1874), Mr. Justice Bradley sitting on circuit reviewed the case of persons convicted of violating the Civil Rights Act of 1870. The defendants moved to arrest judgment, and in supporting their motion, Bradley distinguished between those guaranteed rights which Congress can positively enforce and those rights which Congress can preserve from state infringement but cannot legislate directly in support of. The Thirteenth Amendment in Bradley's view gave the federal government power to legislate for the total eradication of slavery, and Bradley cited a conspiracy to prevent a Negro, because of his race, from leasing and cultivating a farm as an example of a violation of rights which the federal government could reach. The result of the *Cruikshank* case was subsequently affirmed by the Supreme Court, but no explicit decision on the constitutionality of the Civil Rights Act was rendered. *United States* v. *Cruikshank*, 92 U.S. 542 (1875).

Support for the constitutionality of the Civil Rights Act can be drawn from a number of other lower court cases. Mr. Justice Swayne wrote on circuit that "We entertain no doubt of the constitutionality of the (Civil Rights) act in all its provisions" in a case arising shortly after passage of the bill. *United States* v. *Rhodes*, 27 Fed. Cas. 785 (Case #16151, C.C., D. Ken. 1866). In the process of overturning an indenture agreement, Mr. Justice Chase, also on circuit, noted that the 1866 Rights Act had been passed pursuant to the Thirteenth Amendment and was wholly constitutional. *In re Turner*, 24 Fed. Cas. 337 (Case #14247, C.C., D. Md. 1867). In a later case (significantly decided after judicial attitudes on racial questions had stiffened) persons indicted for an attempt to interfere with Negroes leasing and cultivating land answered by a demurrer challenging the constitutionality of the Civil Rights Act. Congress was held to have power to protect Negroes against racial discrimination, because a denial of a citizen's fundamental privileges was an element of servitude. *United States* v. *Morris*, 125 Fed. 322 (E.D. Ark. 1903).

II. PROPOSED FAIR HOUSING LEGISLATION

It is presently proposed that Congress legislate against racial or religious discrimination by persons selling or renting housing or by persons engaged in financing such sales or rentals. Given the present state of judicial interpretation of Congress' powers, the constitutionality of such a proposal seems certain.

Proponents of fair housing legislation rely chiefly on the power of Congress to regulate interstate commerce; in view of recent decisions that reliance seems well-founded. The high-point of judicial tolerance of congressional action under the commerce power is, of course, *Wickard* v. *Filburn*, 317 U.S. 111 (1942) in which the Court held that: "even if (an) activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce. *Supra* at p. 125."

Moreover, Congress can regulate one whose acts have a trivial effect on interstate commerce, if the cumulative effect of his acts and the acts of others similarly situated is far from trivial. *Supra* at pp. 127–28.

More recently, the conditions necessary to justify congressional action have been examined in the cases supporting the public accommodations section of the 1964 Civil Rights Act. *Katzenbach* v. *McClung*, 379 U.S. 294 (1964) and *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241 (1964). In the *McClung* case racial discrimination by a restaurant which received a substantial portion of its food from out-of-state sources was held to effect interstate commerce sufficiently to justify congressional regulation, even though the restaurant served a basically local clientele. Congress had determined that:

a. Negroes spent less per capita than whites in restaurants in areas where discrimination was common and that the resultant reduction in restaurant business restricted the general food market;

b. restaurant discrimination tended to discourage the interstate travels of Negroes; and

c. professional people and skilled workers were deterred from moving into areas where there was discrimination in public accommodations, and that industries were in consequence less likely to locate in such areas.

These factors were held to produce a sufficient effect on interstate commerce to justify remedial federal legislation. *Supra* at pp. 299–300.

Each of these factors, and many others, might be said to result from discriminatory housing sales, and the logic of the McClung case, therefore, supports congressional power over such discrimination.

A more general test of congressional action can be found in the *Heart of Atlanta* case. The Court held there that Congress' power over commerce is plenary and can be questioned only where there is no rational basis for finding that racial discrimination affects commerce or where the means selected to cure the evil are neither reasonable nor appropriate. It seems clear that neither test would present any real problem in the case of fair housing legislation, particularly in view of the generally sympathetic attitude of the present court.

If, however, additional grounds for congressional action are desired, two other supporting arguments may be suggested. That the Fourteenth Amendment's guarantee of equal protection operates only against state activities and does not impinge on individual acts has been clear since the *Civil Rights Cases, supra*. Nevertheless the so-called state action concept has recently led to an extension of these safeguards to areas in which private parties act with considerable support from or subsidy by state governments. Thus in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961) the Court applied the Fourteenth Amendment to a privately owned restaurant which was located in a publicly owned and operated parking garage, and held that racial discrimination by the restaurant constituted a denial of equal protection. In that case, the lease of space in the garage to various facilities was necessary for the financial integrity of the project, and the parking authority had made certain contributions, largely in the form of construction expenses to the restaurant. On this basis, the Court found that: "the State has so far insinuated itself into a position of interdependence with Eagle (the restaurant) that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." *Supra* at p. 725.

While it is not altogether clear precisely what elements of the Burton transaction were determinative of state action, it is clear that an interdependence of private developers, lending institutions, and individual mortgagors with the federal or state governments frequently exists. Certainly the gamut of governmental activities affecting private housing is wide, including cash subsidies, guarantees of mortgage loans, tax exemptions, zoning restrictions and housing codes, and the exercise of eminent domain powers with the subsequent transfer of acquired properties to private owners, and we have the testimony of William Levitt that in view of the mortgage insurance program "we (large-scale builders) are 100% dependent on the Government. Whether this is right or wrong it is a fact." *Hearings on H.R. 5611, Before a Subcommittee on Housing of the House Committee on Banking and Currency*, 81st Cong., 1st Sess. 566 (1957). Consequently it could be argued with some force that the intertwining of government actions and programs with the acts of the private housing industry is sufficient to justify application of Fourteenth Amendment guarantees to housing sales.

A final possible ground for congressional action in passing open housing legislation is rather far-out. Nonetheless one might venture to resurrect the original rationale of the 1866 Civil Rights Act—namely that interference with the right to acquire property represents a form of slavery and is subject to federal legislation under the Thirteenth Amendment. It is ironic that an earlier, presumably less liberal age, found this position natural while in the present it has an aura of the implausible. Nonetheless it is a constitutional position which has never been explicitly rejected by the Court, and its resurrection may be more than academically interesting.

In summary then there seems little doubt that Congress has the authority to pass fair housing legislation in pursuit of its commerce power; the two additional supports of congressional authority seem so much additional frosting on the constitutional cake.

Mr. HART. Mr. President, I yield 3 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I spoke earlier this morning and laid before the Senate the weakness and inadequacy of the administration in bringing the bill up too late and then loading it with the open housing provision which, as I have said many times before, and as the Senator from Pennsylvania [Mr. SCOTT], has so eloquently said, could have been handled more adequately than had been handled even in the other body, by executive order, as President Kennedy did. I also pointed out that we would be faced with a necessity for cloture to deal with it, and that our efforts could go down the drain, and that there would be the resulting frustration and gnashing of teeth as a result of having the legislation discarded when this needed to be done.

This is going to signal a long fight on rule XXII, as a result of our now seeing the civil rights bill go down the drain, something that I thought was behind us.

In the moment or two that I have, I wish to address a plea to my colleagues on the Republican side. I hope my colleagues on the Republican side will vote for cloture, notwithstanding that they may have reservations, doctrinal or otherwise, about cloture. I repeat, this

is the party of Lincoln, which was the architect of civil rights. On previous occasions, many bills were passed under the brilliant and inspired leadership of our minority leader. On this occasion he does not go along. But I hope it will not be said that the Republicans defeated the bill. The only answer to that kind of argument which may be made is for Members on the Republican side to give the maximum possible number of votes in favor of cloture.

Mr. President, there will be a civil rights bill next year. There may be one every year after that. The only way we reasonably can expect to get such civil rights bills is by a coalition between those on the Democratic side who believe in civil rights legislation and those on the Republican side who believe in it. I hope very much that this coalition will be restored. I think that will be done if the administration shows more wisdom in handling this bill next year, and if there is demonstrated a willingness on this side of the aisle to have this bill by employing the greatest possible number of votes to bring it up with respect to cloture.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. DIRKSEN. Mr. President, I yield 3 minutes to the Senator from Mississippi [Mr. STENNIS].

Mr. STENNIS. I thank the Senator from Illinois.

I just want to respond quite briefly to the point made this morning that a majority of the Senate voted the other day for cloture and that failure now to invoke cloture would be to thwart the will of the majority.

I raise the question, What majority are we talking about, particularly with reference to the housing provision, title IV, of the bill? What majority are we talking about?

I examined the 1964 platforms for the Democratic and the Republican Parties. Neither one of the parties, by my hastily examining the platforms—and I think I am correct—took any kind of stand one way or the other with reference to the subject matter of this housing title.

Now let us look to what the people have said upon this issue, when they have had a chance to express themselves on the question of housing. Every time this question has been submitted by ballot to the will of the qualified electors in a State and several cities, in scattered parts of this Nation, this proposal has been voted down.

That is the kind of an expressed will of the people that has been made, without exception, on this issue.

In Akron, Ohio, the people voted the proposal down on November 4, 1964.

In Berkeley, Calif., it was voted down by the people in 1963.

In Seattle, Wash., it was voted down by the people in 1964.

In Tacoma, Wash., it was defeated in a referendum by the people in 1964.

In the State of California, in a statewide referendum, on the same basic question, that proposal was voted down by a very striking majority vote against the proposal.

So this question goes to a vital question that the people understand; they are directly involved; they are the majority to be considered; they—not a mere temporary majority of those of us here—the people now are the controlling majority of this Nation.

So the voters have indicated how they feel on this question, and it is the people of the Nation who have caused this vote here last week. I refer to the people in every section of the Nation, not those of the South alone.

This is another attack on the State courts throughout the Nation. As my time is up, I yield the floor.

I thank the Senator for yielding to me.

Mr. DIRKSEN. Mr. President, how stands the time?

The ACTING PRESIDENT pro tempore. The proponents have 2 minutes remaining; the Senator from Illinois has 19 minutes.

Mr. DIRKSEN. Nineteen? Twenty. I yielded only 3 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Illinois has used 1 minute since then.

Mr. DIRKSEN. The Senator from Illinois had 23 minutes; he yielded 3. Twenty-three minus three leaves twenty.

The ACTING PRESIDENT pro tempore. While the inquiry was being made, time was used. The tally sheet shows 19 minutes remaining.

Mr. DIRKSEN. How does time disappear when one does not yield time?

The ACTING PRESIDENT pro tempore. The tally sheet shows 19 minutes.

Mr. DIRKSEN. I suppose I must equip myself with a slide rule to make certain that I know how the time gets away.

Before I address myself to the cloture motion, I wish to clear a misapprehension that may have arisen as a result of something I said last week on the housing title. I mentioned Federal judgeships, and almost at once there was a conclusion that the President might generously have offered me a judgeship. Nothing could be further from the truth. Nor did I mean to convey such an impression.

In all the years I have known the President as majority leader, as Vice President, and as President, we have always dealt at arm's length, as honorable people should. He has never sought to bribe, buy, or persuade me in that fashion, nor have I him. We have never found it necessary. We thought our major interest was the national interest, and we tried to serve it as gentlemen should.

I want to say, for the President, that when this information came to my attention, I called him immediately and told him about it. I said I wanted to be sure that he got no such impression from reading the RECORD.

Now, responding for a moment to the argument that there is an effort here, by our endeavors, to prevent this bill from coming to the Senate for attention and consideration: There is no inhibition, in this effort on the motion to consider, that prevents anyone from discussing the bill. I spent 2 hours discussing title IV last week. There were others who discussed titles I and II. So there is nothing whatsoever that prevents a discussion of the bill.

We have to use this device to get this message to the country—and I am of the opinion that we have to use it to get it to the Senate. Last week we had difficulty in bringing in a quorum to the Senate floor. We scouted around for hours, and technically sent people out to arrest Senators and bring them to the Senate Chamber and make them put in an appearance.

I sat here, Mr. President, until 4:30 in the afternoon, waiting to make a speech. I was to be preceded by the distinguished Senator from Texas [Mr. TOWER]. On that same night—that was Tuesday—he was to have a big dinner in Texas, and there announce his campaign for reelection. He never did get to make his speech. He waited and waited, patiently, and I did a share of watchful waiting myself. So he did not get on, and I did not get on, and finally we had to recess the Senate. It appears to me that if Senators had been here, we could have had a very considerable discussion of this bill.

Now, it is the undoubted right of 16 Senators or more to file a motion and ask for the imposition of cloture. But before the Senate is gagged—and that is what it amounts to, asking Senators to gag themselves; and I plead guilty to having done it before, on the 1964 act, when, with hat in hand, I went on bended knee to ask Senators on this side of the aisle to impose cloture, so that we might carry that long labor to fruition, so I know what that is—there ought to be some reasonable ground for it.

On the 1964 act, we spent 57 days, and on the Voting Rights Act we spent 37 days. How much time have we spent here? Well, anybody who is facile in arithmetic can figure it. The matter was called up on the 6th of September. That was the day after Labor Day. For 3 solid days, it was almost impossible to do business in this Chamber, because we could not get the Senators to come to the floor. That is what I call cyclonic enthusiasm for this bill.

There are two sides to cloture, and two sides to the argument. It is not only a case of giving somebody a chance to make his argument, but there ought to be a listener; and the listeners were not here. It reminds me of the father out home who wanted to send his girl to Wellesley; and when the dean sent an application, he filled it out. At the bottom it asked, "Is she a leader?"

He wrote, "Well, she is not particularly a leader, but she is a good follower."

About a week later, he received a letter from the dean, saying, "We are delighted to have your daughter. We now have 199 leaders and 1 follower."

There were no followers here. There was nobody to listen to the debate, and that is the reason this story has not gotten over. It has not been told. It has not been told even to the Senators, as a matter of fact.

That is the reason why I exhort everybody to oppose this cloture motion, on the ground that we have to get this story over before we let the bill come on for action and some final disposition.

As I said, it was called up on the 6th of September. Then we had the quorum problems, and then, of course, on Monday, September 12, the cloture motion. The vote came after our consideration of the minimum wage conference report. This floor fairly resounded with speeches and arguments on the minimum wage, and, at long last, probably in the circa of 6 or 6:30, we got around to a cloture vote. So now the motion is before us again.

Mr. President, there are seven titles in this bill. I wonder how many Senators have any knowledge of these titles. Title I deals with Federal juries. Senator ERVIN and Senator HRUSKA have done a monumental job on it; but there was nobody here to listen to the argument. The committee heard arguments from Federal judges and Federal clerks of courts who came here and said it would not work. The senior judge in Alabama wrote me the other day. He said, "As it stands now, only 50 percent of the nonwhites over the age of 21 are registered. Automatically, if you are going to the registration rolls to pick up your juries, you have disqualified 50 percent of the nonwhite adult population in the State of Alabama." I could go on and on, enumerating the difficulties here. Has that part of the story been told? Has the rest of it been told? Certainly not.

Then, when it comes to title III, there we have broad powers for the Attorney General to file civil actions for injunctive relief, where any right, under the Constitution, may be at issue. That has hardly been discussed. It has scarcely been explored. How, then, can Senators cast an intelligent vote on this matter, without knowing? Yet there is nothing in the motion to take up that prevents a discussion of anything that is in title I, in title II, or in title III.

I spent some 2 hours last week discussing title V. It is highly controversial, and contains sleepers galore. Here, for one thing, is the question of constitutionality. I have examined this list of lawyers. They are all law school deans, for the most part. I suppose that is the last word—except it is not the last word in my book. Because we had two professors of law from New York University, pretty artful in that field, come down and give the specifics with respect to constitutionality, and what this would do in liquidating the due process clause in the Constitution of the United States.

There is one thing about title IV. It was not even in the bill when the bill went to the Committee on the Judiciary. It was written in later. That deals with the housing board.

The administration did not want that board. The Attorney General, insofar as I know, did not want it, but they wrote it into the bill anyway. Just think of the power that is involved.

They use a residual clause and say that they shall have all of the power of investigation and subpena that the National Labor Relations Board has.

The National Labor Relations Board has authority to issue cease-and-desist orders. This is a broad grant of power in a highly emotional field.

Has it been properly explored? In my judgment it has not, because there has been only one major speech on the subject, and I am the one who made it.

Mr. STENNIS. Mr. President, will the Presiding Officer try to get the Senate to order so that we can hear the Senator?

The ACTING PRESIDENT pro tempore. Let the Senate be in order.

The Senator from Illinois may proceed.

Mr. DIRKSEN. Mr. President, I do not know whether the Senators have given adequate attention to title V, which appears on page 42 of the bill.

The Attorney General would like to have those powers, but I remind the Senate that that is a criminal statute. It provides for up to a $10,000 fine and a year in jail. And what does it say? It says that:

> Whoever . . . injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person.

What does that relate to? It relates to the right to vote or qualifying to vote or qualifying or campaigning for public office or going to school, attending any public school or college, participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States.

Why, that is as wide as a 40-acre field. That is what they ask us to do.

It goes on and states that it relates to:

> Applying for or enjoying employment, or any perquisites thereof, by any private employer or agency of the United States or any State or subdivision thereof.

It also mentions:

> Selling, purchasing, renting, leasing, occupying, or contracting or negotiating for the sale, rental, lease or occupation of any dwelling.

The last clause of that section provides that anyone who injures or intimidates anybody "shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000 or imprisoned not more than 10 years, or both."

If that is not a criminal statute, then I do not know the meaning of criminality or a criminal statute.

This goes on at great length. It has several sections. However, it would take all day to go through this thing.

Mr. President, who has raised his voice on title V on the Senate floor? I have not heard title V alluded to as yet. However, that is what we are asked to do, to put the seal of approval upon a criminal statute that can cause no end of mischief.

I do not say it is right or wrong. I say it has got to be explored, studied, considered, argued, and debated. There ought to be more Senators present on the floor to listen to the debate.

To those anxious and very fine people who call me long distance to tell me how wrong I am, I simply say: "Have you read the bill? Have you seen it?"

They have not seen it. They have not read it. They do not know what is in it, and yet they have what I call the effrontery to call a Senator long distance from Michigan, California, my own State, or any State and say: "Get right with the Lord. I do not know what is in it, but you are wrong."

That is a great argument, is it not?

Title VI deals with schools and public facilities.

Title VII deals with election records.

Title VIII deals with the annual report of the Attorney General. I ought to allude to that, because that ought to be an awfully dry subject matter, until we take a good look at it. Then it begins to concern me some.

The Attorney General is expected to make an annual report. It provides:

> SEC. 801. (a) The Attorney General shall submit to the Congress and to the President an annual report concerning enforcement of, and activities undertaken pursuant to, this Act and all other laws of the United States designed to prevent discrimination on account of race, color, religion, sex, or national origin.

Here is a choice little section. It reads:

> Each department, agency, board, commission, instrumentality, and establishment of the United States shall cooperate with the Attorney General to effectuate and carry out the provisions of this section. Nothing in this section shall be deemed to preclude submission to the Congress of reports of activities under any other provision of law.

When the departments and agencies render their report, where are we going to get the information? We will get it from the people who work in those departments, and here we have a vast, sprawling bureaucracy and we say to everyone: From now on you will be a law enforcing officer. You will report to the Attorney General what you know, what you see and what you experience, so that he can put it all in his annual report.

That goes not only for this section, but also for all the other provisions of law.

What do Senators make of it? Where are the specifics that go with it? Why do they want to do this sort of thing? I do not know.

I would not say that they are going to try to embarrass anybody, but I would say that it is not in there for fun. They do not put provisions like that in a bill for fun.

It is noteworthy that the civil rights organizations are divided on the bill. They have their extremes. They are divided even as a lot of other people are divided.

Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator from Illinois has 1 minute remaining.

Mr. DIRKSEN. Mr. President, I just give the Senate the naked proposition: Let the Senate gag itself on a bill that carried 26 amendments by the House, that has scarcely been discussed on the merits, and that contains far-reaching provisions which have not been adequately explained. We are asked to give them consideration. That is a great kettle of fish.

Why, the cloture rule has been in effect here since 1917. It has been exercised rather judiciously. This is one time when there is no justification for the imposition of cloture, because Senators

were not here to hear the story, for one thing, and there has been no opportunity to make an explanation, for another thing.

That is why cloture ought to be voted down.

Mr. HART. Mr. President, I yield 1 minute each to the Senator from Connecticut, the Senator from Hawaii, the Senator from New Jersey and the Senator from Illinois.

Mr. DODD. Mr. President, since the days remaining in the 89th Congress are so few and the list of important legislation still pending is so long, I do not want to consume valuable Senate time with a lengthy civil rights statement today.

As a cosponsor of the Senate civil rights bill and one of the floor managers of the House bill now before us, however, I do want to reaffirm my strong support for the enactment of a worthwhile bill this year.

Once again we are faced with a difficult situation in which a minority of the Senate, through the archaic device of the filibuster, is blocking the will of the majority.

For 2 weeks now, the Senate has been bogged down in empty debate on the motion just to take up the civil rights bill. Consequently, we have not been able to consider the bill on its merits, as any bill should be considered.

I supported last weeks' unsuccessful cloture motion, and I hope that the second cloture vote today will bring this delay to an end so we can start work on the substance of this important administration proposal.

If we can consider the legislation itself, the provisions of the House-passed bill and the many amendments which have been offered, I am confident that we will see needed civil rights legislation, approved this year.

Unfortunately, there is still a tragic disparity between principle and practice in this country, an inconsistency between words and deeds which undermines the strength and health of our Nation.

In these 12 years following the historic school desegregation decision, we have moved a long way toward realizing in our everyday lives those principles of equality which are the heart of our public philosophy.

The four vitally important civil rights bills enacted since 1957 are truly landmarks in the long struggle to provide all American citizens with equal rights, equal opportunity, and equal protection of the law.

Our work is far from done, however, and it will not be done until the last vestiges of segregation and racial discrimination disappear.

Unfortunately, a new and serious dimension has been added to this problem with the recent outbreak of violence in our streets.

For some time I have been very alarmed and deeply concerned over the unrest which has led to riots and other disturbances in many of our cities.

I can understand the feeling of frustration, particularly among young people, over what seems to be the painfully slow ascent of the Negro to his rightful place in American society. However, this cannot justify or condone irresponsible and lawless behavior or the violence and bloodshed of recent months.

I would like to remind the extremist minority among our Negro citizens, those who denounce all white Americans as enemies and openly advocate terror and violence, that there are many of us who were working to assure the rights of Negroes long before these advocates of terror were born.

We have seen, in this time, vast changes wrought in the pattern of American thought and life through responsible and peaceful means. I am confident that we will see the last barriers of segregation and racial discrimination broken down, not by knives, clubs, and broken bottles, but by the orderly processes of the law and by the conscience of the American people.

This is the responsibility of Congress, of the Senate here today. To succumb to the argument of those extremists at the other end of the spectrum, who say civil rights legislation has caused the recent riots, would be a folly of the highest order. If we refuse to seek the cure for the present ills, as they would have us do, we not only abdicate a position of responsibility but we also issue an open invitation for far more serious trouble.

The bill before us—which deals with discrimination in housing, in education, in the selection of Federal and State juries, and with civil rights crimes—could be of tremendous significance in advancing the cause of human dignity and individual rights.

I am very proud to point out that my own State of Connecticut already has an effective housing law on the books. This statute prohibits discrimination in the sale or rental of "any housing accommodation or building lot" with the exception of a room in a private home or an owner-occupied two-family dwelling.

Thus the fair housing provisions of H.R. 14765, certainly the most controversial section of the bill, would not be anything new to Connecticut, since our State law is considerably broader than this proposed bill.

Other States have also enacted fair housing laws. This is one reason I find the so-called great debate over this section of the bill to be far less weighty than the opponents claim.

I hope we will finally have a fair opportunity to consider all of the provisions of this proposed civil rights bill. Since I have been asked to be floor manager of title VI, the title dealing with school desegregation, I would like to discuss it very briefly now.

The purpose of this section as first introduced is to prevent violence and intimidation resulting from the desegregation of public schools and public facilities, and to give the Attorney General the same authority in school desegregation suits that he now has in other areas such as public accommodations, employment, and voting.

A very effective reply to critics of title VI is contained in the disturbing news reports of recent days. As children across the country are returning to school, we hear of a town in Louisiana which has no teachers for the Negro children who have enrolled in a formerly all-white school, of the bombing of homes of two Negro families in McFarlan, N.C., because their children have entered predominantly white schools, of attacks on schoolchildren in Mississippi, and of numerous other instances of open intimidation directly related to school desegregation.

This is only one of many points which I would like to discuss later, but for now I think it clearly demonstrates the need for this particular provision of the proposed bill.

I am one of the many Senators who wish to see this bill passed this year in a form similar to that endorsed by myself and nine other members of the Judiciary Committee.

Nonetheless, I hope that this will not have to be an all-or-nothing question. If the disagreement over the housing provision reaches an impasse and cannot be resolved in this session, I hope that some agreement can be worked out that will at least save the other important sections of the bill.

Racial prejudice and unjust discrimination are cancers which eat away at the foundation of our society.

The liberty and freedom of all men is threatened when some men are denied equal rights and equal treatment.

That is why it is morally imperative that we take every step, however small, within the limits of political feasibility, to rectify those injustices which we know still exist in our society.

Mr. FONG. Mr. President, our Republic is founded on the individual worth of each and every man. It is deeply rooted in the traditions of freedom, justice, and the theological conviction that the tint of skin, slant of eye, and accident of birth are irrelevant—that all men, in the eyes of God, are, indeed, equal.

Our Declaration of Independence so declares.

The Constitution of the United States so guarantees as inalienable the equality of rights and the equality of opportunity under law.

This is the charter of faith which is our heritage, and which is the moral foundation of our society.

The Congress has heeded well these moral imperatives, Mr. President, by enacting successively two profoundly historic civil rights laws in 1964 and 1965.

Though these laws have eliminated many blatant forms of discrimination throughout our land, there remain vestigial areas in which additional corrective legislation is badly needed.

We are now confronted with a proposed Civil Rights Act of 1966—H.R. 14765—to secure these constitutional rights—the right to serve on both Federal and State juries without regard to race, color, religion, sex, national origin, or economic status; the right to be protected when engaged in lawful activities; the right to protection against discrimination in public education and public facilities; the right to be protected against discrimination in the purchase, rental, lease, and financing of housing;

and the right to the preservation of election records.

Mr. President, on September 6, a group of 10 Senators representing a majority of the Committee on the Judiciary submitted a joint statement to the Senate setting forth the history of this legislation, and painstakingly analyzing each section of the bill.

I believe that the bill now being offered for consideration by the Senate is a wholly reasonable one. I am satisfied that it is constitutional. Moreover, in my opinion, there is a demonstrated need for this legislation.

Our moral imperative demands that the rights set forth in H.R. 14765 be fulfilled.

The enactment of this bill, together with the landmark laws of 1964 and 1965, would represent another forward step and continued progress in the implementation of the inalienable rights of justice, freedom, and dignity contained in our Constitution.

Mr. CASE. Mr. President, today's cloture vote is premature. Since, however, the leadership determined to have a cloture vote today, I joined in signing the cloture petition.

But I repeat this cloture vote is premature. Only a few days ago a majority of Senators indicated their desire to consider the civil rights bill. Not all agree with every provision in the bill as passed by the House; but each, by his vote, registered his concern that the Senate take up the bill and act on it.

But the majority leader reportedly said that if cloture fails today only 3 days since the first cloture vote, he will regard the vote as final disposition of the bill for this Senate session, and he will move to take up other matters. This is utterly unjustified. It amounts to throwing in the towel before the first round has begun.

Everybody knows the Senate will not vote cloture unless the right of fair and full discussion has been abused. No one claims that in this case.

Everybody knows, too, that the filibuster cannot be broken by halfhearted efforts, especially when the filibuster occurs at a time most advantageous to the opponents of civil rights.

For this the administration cannot escape responsibility.

Almost a year ago the President promised legislative recommendations to assure more effective protection of civil rights. But months and months went by before his proposals were submitted in late spring. Indeed they did not arrive until our bipartisan group introduced its own comprehensive bill.

It was easy to foresee the outcome of the delay. For inevitably Senate consideration would run into a filibuster operating under the protection of rule 22.

Some of us have waged a continuing fight over the years to change that rule. But in the 1950's our efforts were stubbornly opposed by the then majority leader, who used everything at his command to defeat any meaningful change.

When, in 1960, we were able to get a majority of the Senate favoring a change, the same man, then Vice President, refused to make a parliamentary ruling that is essential to enable the Senate to come to a vote on the proposed change.

No one has done more to protect the filibuster and no one is more aware of its power.

Mr. President, I recall these facts because it is important that the Senate and the country know where the responsibility for this failure of this civil rights bill really lies.

The bill a majority of us want to take up is not a radical bill. It fills in small but vital chinks in earlier civil rights legislation and, in additon, would make a start on the elimination of discrimination in housing. This provision has excited controversy which is hardly justified in view of the fact that a number of States, including my own State of New Jersey, have already enacted legislation going considerably further in the housing field. But opponents of open houisng have succeeded in obscuring the actual reach of title IV as passed by the House and only floor discussion at some length can dispel that confusion.

Congress should have passed this modest bill. But its failure does not have to doom the course of open housing.

The "stroke of the pen" that the late John Kennedy called to the attention of another President is just as available today. The President can and will, I hope, issue an Executive order barring discrimination in all housing federally assisted or federally supported in any way.

CHICAGO CIVIL RIGHTS ACCORD

Mr. DOUGLAS. Mr. President, on August 26, a highly representative group of community leaders in Chicago reached an accord on one of the most pervasive and troublesome difficulties facing cities in the United States today. A conference of the top business, labor, government, and religious leaders announced that day agreement on a program for progress in fair housing opportunities for people of all races and backgrounds in the Chicago area.

I want to call this agreement to the attention of the Senate, both because of the hope it offers for real progress and because the community leaders who brought about this agreement deserve high praise. I wish particularly to indicate my respect and gratitude for the active statesmanship of Mayor Richard Daley, Archbishop John P. Cody of the Catholic archdiocese of Chicago, Dr. Martin Luther King, Mr. Ben W. Heineman, chairman of the Chicago, North Western Railroad, who was chairman of the group which reached the accord, and Mr. Ross Beaty, head of the Chicago Real Estate Board. Officials of the Chicago Housing Authority, the Chicago Commission on Human Relations, the Cook County Department of Public Aid, and the United Auto Workers and other unions also deserve praise for their promises to actively participate in making the agreement work.

Not only did the groups I have mentioned develop an agreement and a statement of objectives, but they also agreed to establish a separate continuing body, consisting of "recognized leaders from government, commerce, industry, finance, religion, real estate, labor, the civil rights movements, and the communications media," to further in the Chicago area "the fundamental principle that freedom of choice in housing is the right of every citizen."

This is not a new effort in Chicago and some reference has been made in the Senate recently to one of the communities where a major effort has been made; namely, the Hyde Park-Kenwood area in which I reside. I am saddened that some would deride this effort and ignore the very real progress that has been made. I have never claimed that we had attained a paradise or an Eden in Hyde Park, but on the whole I believe that we have made a relative success there.

We must realize that some 20 million Negroes and 5 million persons of Latin descent are an integral and important part of our society. We have got to learn to live together. The question we face is on what terms shall we live together. Shall we give all people hope for a decent life or shall we arbitrarily impose despair on some? To all Americans, I make this plea: Let us be friends; let us be friends; let us be friends.

Mr. President, I ask unanimous consent that the Chicago agreement, the official title of which is the "Report of the Subcommittee to the Conference on Fair Housing," of August 26, be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

REPORT OF THE SUBCOMMITTEE TO THE CONFERENCE ON FAIR HOUSING CONVENED BY THE CHICAGO CONFERENCE ON RELIGION AND RACE

For the last week, this subcommittee has been discussing a problem that exists in every metropolitan area in America. It has been earnestly seeking immediate, practical, and effective steps which can be taken to create a fair housing market in metropolitan Chicago.

In the City of Chicago itself, the policy of fair housing has been established by the clear statement of purpose in the Chicago Fair Housing Ordinance enacted in 1963. It provides:

"1. It is hereby declared the policy of the City of Chicago to assure full and equal opportunity to all residents of the City to obtain fair and adequate housing for themselves and their families in the City of Chicago without discrimination against them because of their race, color, religion, national origin or ancestry.

"2. It is further declared to be the policy of the City of Chicago that no owner, lessee, sublessee, assignee, managing agent, or other person, firm or corporation having the right to sell, rent or lease any housing accommodation, within the City of Chicago, or any agent of any of these, should refuse to sell, rent, lease, or otherwise deny or withhold from any person or group of persons such housing accommodations because of the race, color, religion, national origin or ancestry of such person or persons or discriminate against any person because of his race, color, religion, national origin or ancestry in the terms, conditions, or privileges of the sale, rental or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith."

The subcommittee has addressed itself to methods of making the Chicago Ordinance work better, the action which can be taken by various governmental groups, the role of the Chicago Real Estate Board, and how to make further progress towards fair housing in the months ahead. It would be too much

to expect complete agreement on either the steps to be taken or their timing. Nevertheless, the representatives at the meetings have undertaken specific and affirmative measures to attack the problem of discrimination in housing. Carrying out these commitments will require substantial investments of time and money by both private and public bodies and the wholehearted effort of all Chicagoans of good will, supported by the cooperation of thousands of others.

In the light of the commitments made and program here adopted and pledged to achieve open housing in the Chicago metropolitan community, the Chicago Freedom Movement pledges its resources to help carry out the program and agrees to a cessation of neighborhood demonstrations on the issue of open housing so long as the program is being carried out.

The subcommittee believes that the program can be a major step forward. It has confidence that this program, and the more extensive measures bound to flow from it, will achieve the objective of affording every resident "full and equal opportunity to obtain fair and adequate housing without discrimination because of race, color, religion, national origin or ancestry."

The participants in this conference have committed themselves to the following action:

1. The Chicago Commission on Human Relations is already acting to require every real estate broker to post a summary of the City's policy on open housing and the requirements of the Fair Housing Ordinance in a prominent position in his place of business. To obtain full compliance with the Fair Housing Ordinance, the Commission will give special emphasis to multiple complaints and will follow up on pledges of non-discrimination resulting from prior conciliation proceedings. The Commission will increase its enforcement staff and has already requested budgetary increases to support a significantly higher level of effective enforcement activity. This will include year-around inquiry to determine the extent of compliance in all areas of the City, but without placing undue burdens on any broker's business. The Commission will initiate proceedings on its own motion where the facts warrant. It will act on all complaints promptly, ordinarily initiating an investigation within 48 hours, as is now the case. In order to facilitate proceedings on complaints, it has changed its rule to provide for the substitution of attorneys for Commissioners to preside in conciliation and enforcement hearings. Where a formal hearing justifies such action under the ordinance, the license of an offending broker will be suspended or revoked.

The City will continue its consistent support of fair housing legislation at the State level and will urge the adoption of such legislation at the 1967 session of the State Legislature.

2. In a significant departure from its traditional position, the Chicago Real Estate Board announced at the August 17 meeting that its Board of Directors had authorized a statement reading in part as follows:

"As a leadership organization in Chicago, we state the fundamental principle that freedom of choice in housing is the right of every citizen. We believe all citizens should accept and honor that principle.

* * * * *

"We have reflected carefully and have decided we will—as a Chicago organization—withdraw all opposition to the philosophy of open occupancy legislation at the state level—provided it is applicable to owners as well as to brokers—and we reserve the right to criticize detail as distinguished from philosophy—and we will request the state association on Real Estate Boards to do likewise but we cannot dictate to them."

While not willing to dismiss its appeal from the decision of the Circuit Court of Cook County upholding the validity of the City's Fair Housing Ordinance, the Board has committed itself effectively to remind its members of their duty to obey the ordinance and to circulate to them the interpretation of the ordinance to be furnished by the Chicago Commission on Human Relations. The individual representatives of the Board also committed themselves to join other realtors to participate in a continuing organization, should one be formed, to promote effective action implementing the principle of freedom of choice in housing.

3. The Chicago Housing Authority will take every action within its power to promote the objectives of fair housing. It recognizes that heavy concentrations of public housing should not again be built in the City of Chicago. Accordingly, the Chicago Housing Authority has begun activities to improve the character of public housing, including the scattering of housing for the elderly across the city, and initiation of a leasing program which places families in the best available housing without regard to the racial character of the neighborhood in which the leased facilities are provided. In the future it will seek scattered sites for public housing and will limit the height of new public housing structures in high density areas to eight stories, with housing for families with children limited to the first two stories. Wherever possible, smaller units will be built.

In addition, in order to maximize the usefulness of present facilities and to promote the welfare of the families living in them, a concerted effort will be made to improve the opportunities for satisfactory community life in public housing projects. In order to achieve this improvement the participation of all elements in the surrounding communities will be actively enlisted and utilized.

4. The President of the Cook County Board of Commissioners has advised the chairman of the subcommittee by letter that the Cook County Department of Public Aid will make a renewed and persistent effort to search out the best housing for recipients available within the ceilings authorized by the legislature, regardless of location. Each employe of the Department will be reminded that no recipient is to be prohibited or discouraged from moving into any part of Cook County because of his race, color, or national origin. The Department will not be satisfied if recipients live in less satisfactory accommodations than would be available to them were they of a different race, color or national origin.

Department employes will be instructed to report any discriminatory refusal by real estate brokers to show rental listings to any recipient to the Chicago Commission on Human Relations or the State Department of Registration and Education through the Chief of the Bureau of Housing of the Public Aid Department. Department employes will also encourage recipients who encounter discrimination in dealing with brokers to report such experiences to the same agencies. The Chief of the Bureau of Housing will maintain a close follow-up on all matters that have been thus reported.

5. The Urban Renewal Program has had some success in achieving stable residential integration in facilities built in renewal developments, with the cooperation of property owners, property managers, community organizations, and neighbors to that end. The Urban Renewal Program will devote itself to producing the same results in its relocation activities and will earnestly solicit the support of all elements of the community in the City, County and metropolitan area in these efforts.

In relocating families, the Department of Urban Renewal will search out the best housing available regardless of location. Each employe of the Department will be reminded that no family is to be prohibited or discouraged from moving into any part of the Chicago metropolitan area because of his race, color, or national origin. Department employes will be instructed to report any discriminatory refusal by a real estate broker to show listings, to the Chicago Commission on Human Relations or the State Department of Registration and Education through the Director of Relocation. They will also encourage families who encounter discrimination in dealing with a broker to report such experiences to the same agencies. The Director of Relocation will maintain a close follow-up on all matters that have been thus reported.

6. The Cook County Council of Insured Savings Associations, by letter, and the Chicago Mortgage Bankers Association, at the Committee meeting on August 17, 1966, have affirmed that their policy is to provide equal service and to lend mortgage money to all qualified families, without regard to race, for the purchase of housing anywhere in the metropolitan area.

7. Assistant Attorney General Roger Wilkins, head of the Community Relations Service of the United States Department of Justice, has advised the chairman of the subcommittee that the Service will inquire into the questions raised, under existing law, with respect to service by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation to financial institutions found guilty of practicing racial discrimination in the provision of financial service to the public. While the matter is a complex one, it will be diligently pursued.

8. The leaders of the organized religious communities in the metropolitan area have already expressed their commitment to the principle of open housing.

The Chicago Conference on Religion and Race, which is co-sponsored by the Catholic Archdiocese of Chicago, the Church Federation of Greater Chicago, the Chicago Board of Rabbis and the Union American Hebrew Congregations, pledges its support to the program outlined and will enlist the full strength of its constituent bodies and their churches and synagogues in effecting equal access to housing in the metropolitan area for all people. They pledge to:

(1) Educate their membership on the moral necessity of an open and just community.

(2 Urge owners to sell or rent housing without racial restriction.

(3) Support local real estate offices and lending institutions in their cooperation with this program.

(4) Cooperate with and aid in the establishment of responsible community organizations and support them in the implementation of these programs.

(5) Undertake to secure peaceful acceptance and welcome of Negro families prior to and at the time of their entrance into any community.

(6) Use their resources to help make housing available without racial discrimination.

(7) Establish, within 30 days, one or more housing centers, with the assistance of the real estate and housing industry and financial institutions, to provide information and help in finding suitable housing for minority families and to urge them to take advantage of new housing opportunities.

9. The representatives of the Chicago Association of Commerce and Industry, the Commercial Club, the Cosmopolitan Chamber of Commerce, Chicago Mortgage Bankers Association, Metropolitan Housing and Planning Council, Chicago Federation of Labor and Industrial Union Council, and other secular groups represented in these discussions recognize that their organizations

have a major stake in working out the problems of fair housing. Each such representative welcomes and pledges support to the program outlined in this report. Further, each undertakes to secure the support of his organization and its members, whether individuals, corporations, locals or groups, for the program and their participation in it, including education of their members on the importance to them of fair housing throughout the Chicago metropolitan area.

10. The Chicago Conference on Religion and Race will initiate forthwith the formation of a separate, continuing body, sponsored by major leadership organizations in the Chicago metropolitan area and built on a nucleus of the representatives of the organizations participating here. This body should accept responsibility for the education and action programs necessary to achieve fair housing. It should be headed by a board consisting of recognized leaders from government, commerce, industry, finance, religion, real estate, labor, the civil rights movement, and the communications media. Its membership should reflect the diverse racial and ethnic composition of the entire Chicago metropolitan community.

The proposed board should have sufficient stature to formulate a strong and effective program and to provide adequate financing and staff to carry out that program. To the extent of available resources, it should carry forward programs such as, but not limited to, the convening of conferences on fair housing in suburban communities to the end that the policy of the City of Chicago on fair housing will be adopted in the whole Chicago metropolitan area. There must be a major effort in the pulpits, in the school systems, and in all other available forums to educate citizens of the metropolitan area in the fundamental principle that freedom of choice in housing is the right of every citizen and in their obligations to abide by the law and recognize the rights of others regardless of race, religion, or nationality. The group should assist in the drafting of fair housing laws and ordinances. It should make clear the stake that commerce, industry, banking, real estate, and labor, indeed all residing in the metropolitan area, have in the peaceful achievement of fair housing. The group should emphasize that the metropolitan housing market is a single market. The vigor and growth of that market is dependent upon an adequate supply of standard housing available without discrimination. The group should promote such practical measures as the development of fair housing centers after the model now being established by the Chicago Conference on Religion and Race. The group should in the immediate future set up specific goals for achievement of fair housing in the Chicago metropolitan area. Finally, the board should regularly review the performance of the program undertaken by governmental and non-governmental groups, take appropriate action thereon, and provide for public reports.

Although all of the metropolitan areas of the country are confronted with the problem of segregated housing, only in Chicago have the top leaders of the religious faiths, commerce and industry, labor and government sat down together with leaders in the civil rights movement to seek practical solutions. With the start that has been made, the subcommittee is confident that the characteristic drive of Chicagoans to achieve their goals, manifest in the Chicago motto of "I Will," will enable the Chicago metropolitan area to lead the rest of the nation in the solution of the problems of fair housing.

Respectfully submitted.

THOMAS G. AYERS,
Chairman.

Mr. HART. Mr. President, I yield 1 minute to the distinguished majority leader.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized for 1 minute.

Mr. MANSFIELD. Mr. President, I have listened with great interest to the distinguished minority leader in his discussion of eight titles of the bill which yet we are not even considering. The purpose of the cloture motion today is to give the Senate a chance to discuss the substance of the proposed bill and not the shadow.

If we are not given that chance, all the arguments that have been advanced will have been advanced for naught.

The Senator from Illinois is a man of courage and perspicacity. He has good arguments to present in behalf of the position which he holds. But I hold, Mr. President, that the Senate as a whole should not have to be involved with the question of taking up a bill; it should instead be considering the question of a bill—a bill which has substance and about which we have been doing nothing for the past 2 weeks.

So I hope that the motion for cloture will be agreed to and that the Senate can then get on to the main business of civil rights.

The PRESIDING OFFICER (Mr. MONTOYA in the chair). The hour of 2 o'clock having arrived, the Senate, under a previous unanimous-consent agreement, will now proceed to dispose of the pending cloture motion.

The pending question is: Is it the sense of the Senate that the debate on the motion to proceed to the consideration of H.R. 14765 shall be brought to a close?

Under rule XXII, the clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 255 Leg.]

Aiken	Hartke	Muskie
Bartlett	Hickenlooper	Nelson
Bass	Hill	Neuberger
Bayh	Holland	Pastore
Bennett	Hruska	Pearson
Bible	Inouye	Pell
Boggs	Jackson	Prouty
Brewster	Javits	Proxmire
Burdick	Jordan, N.C.	Randolph
Byrd, Va.	Jordan, Idaho	Ribicoff
Byrd, W. Va.	Kennedy, Mass.	Robertson
Cannon	Kennedy, N.Y.	Russell, S.C.
Carlson	Kuchel	Russell, Ga.
Case	Lausche	Saltonstall
Church	Long, Mo.	Scott
Clark	Long, La.	Simpson
Cotton	Mansfield	Smathers
Curtis	McCarthy	Smith
Dirksen	McClellan	Sparkman
Dodd	McGee	Stennis
Dominick	McGovern	Symington
Douglas	McIntyre	Talmadge
Eastland	Metcalf	Thurmond
Ellender	Miller	Tower
Ervin	Mondale	Tydings
Fannin	Monroney	Williams, N.J.
Fong	Montoya	Williams, Del.
Fulbright	Morse	Yarborough
Gore	Morton	Young, N. Dak.
Griffin	Moss	Young, Ohio
Gruening	Mundt	
Hart	Murphy	

Mr. LONG of Louisiana. I announce that the Senator from Washington [Mr. MAGNUSON] is absent on official business.

I also announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Oklahoma [Mr. HARRIS], and the Senator from Arizona [Mr. HAYDEN] are necessarily absent.

Mr. KUCHEL. I announce that the Senator from Colorado [Mr. ALLOTT] and the Senator from Kentucky [Mr. COOPER] are necessarily absent.

The VICE PRESIDENT. A quorum is present. The question is, Is it the sense of the Senate that the debate on the motion to proceed to consider H.R. 14765 shall be brought to a close?

The yeas and nays on this matter are automatic under rule XXII, and the clerk will, therefore, call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMINICK (when his name was called). Mr. President, on this vote my colleague from Colorado [Mr. ALLOTT] and I are paired with the Senator from Kentucky [Mr. COOPER]. If permitted to vote, I would vote "yea" and my colleague would also vote "yea." The Senator from Kentucky [Mr. COOPER] would vote "nay."

The rollcall was concluded.

Mr. LONG of Louisiana. I announce that the Senator from Washington [Mr. MAGNUSON] is absent on official business.

I also announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Oklahoma [Mr. HARRIS], and the Senator from Arizona [Mr. HAYDEN] are necessarily absent.

On this vote, the Senator from Oklahoma [Mr. HARRIS] and the Senator from Washington [Mr. MAGNUSON] are paired with the Senator from Arizona [Mr. HAYDEN].

If present and voting, the Senator from Oklahoma would vote "yea," the Senator from Washington would vote "yea," and the Senator from Arizona would vote "nay."

I further announce that, if present and voting, the Senator from New Mexico [Mr. ANDERSON] would vote "yea."

Mr. KUCHEL. I announce that the Senator from Colorado [Mr. ALLOTT] and the Senator from Kentucky [Mr. COOPER] are necessarily absent.

The Senator from Colorado [Mr. DOMINICK] has previously announced his pair with his colleague [Mr. ALLOTT] and the Senator from Kentucky [Mr. COOPER].

The yeas and nays resulted—yeas 52, nays 41, as follows:

[No. 256 Leg.]

YEAS—52

Aiken	Inouye	Muskie
Bartlett	Jackson	Nelson
Bass	Javits	Neuberger
Bayh	Kennedy, Mass.	Pastore
Boggs	Kennedy, N.Y.	Pell
Brewster	Kuchel	Proxmire
Burdick	Long, Mo.	Randolph
Case	Mansfield	Ribicoff
Church	McCarthy	Saltonstall
Clark	McGee	Scott
Dodd	McGovern	Smith
Douglas	McIntyre	Symington
Fong	Metcalf	Tydings
Gore	Mondale	Williams, N.J.
Griffin	Monroney	Yarborough
Gruening	Montoya	Young, Ohio
Hart	Morse	
Hartke	Moss	

NAYS—41

Bennett	Dirksen	Holland
Bible	Eastland	Hruska
Byrd, Va.	Ellender	Jordan, N.C.
Byrd, W. Va.	Ervin	Jordan, Idaho
Cannon	Fannin	Lausche
Carlson	Fulbright	Long, La.
Cotton	Hickenlooper	McClellan
Curtis	Hill	Miller

Morton	Russell, S.C.	Talmadge
Mundt	Russell, Ga.	Thurmond
Murphy	Simpson	Tower
Pearson	Smathers	Williams, Del.
Prouty	Sparkman	Young, N. Dak.
Robertson	Stennis	

NOT VOTING—7

Allott	Dominick	Magnuson
Anderson	Harris	
Cooper	Hayden	

The VICE PRESIDENT. On this vote, there are 52 yeas and 41 nays. Under rule XXII, two-thirds of the Senators present and voting not having voted in the affirmative, the motion is rejected.

Mr. MANSFIELD. Mr. President, the vote on cloture, in my opinion, indicates that it would be futile to prolong "consideration" of this issue. I use the word "consideration" in quotes in the light of the experience with quorum calls over the past few days and the fact that we have not even been on the substance of the civil rights bill which was passed by the House but only on the procedural question of taking up the bill and making it the pending business. Until that question could be decided, it would not even have been in order to modify, to strengthen, or to delete the housing or any other provision. To spend days on the question of taking up, to compel a cloture vote on that question, is, in my judgment, a most delorable distortion of Senate procedures, but it does not alter the reality which confronts the leadership. The fact is—and the vote taken attests to it—the fact is that the Senate is not going to be permitted to come to grips with the real questions involved in the civil rights legislation. We have just tested the weakest point in the opposition's armor and the strongest point at which proponents could seek at least a clarifying decision as to the Senate's intentions.

The attitudes are clear. The vote on cloture on whether or not to take up can only be interpreted as a vote against civil rights legislation in this session.

In this connection, the RECORD should be clear insofar as the distinguished minority leader, the Senator from Illinois [Mr. DIRKSEN] is concerned. He has acted from conscience as, indeed, I hope we all are acting.

Those of us who know the distinguished minority leader know that he is not to be expected to alter his view even for a Federal judgeship which, by the way, I can say that he was most certainly not offered by the President, in any way, shape, or form, either by hint or by inference, either directly or indirectly—reports in the press to the contrary notwithstanding. [Laughter.]

Even had he changed his view on this procedural question, there is no certainty that cloture would have been obtained. There would have only been, as I have pointed out heretofore, the possibility of cloture. While I regret our divergence on the procedural issue of cloture, no criticism attaches to him, and it ought not to attach to him for standing up earnestly and courageously for his viewpoint. Whatever blame there is attaches to us all.

I would hope that those who are interested in civil rights legislation would ponder the possibility of renewed efforts next year. If the prospects for passage are to be improved, the question of riotings, marches, shootings, and inflammatory statements which have characterized this simmering summer of 1966 in urban areas of the Nation, will have to be faced frankly and bluntly.

There are those who seek by legislative and other governmental activity, an equality of human status in practice, as well as in legal abstract, for all Americans. They have fought long and honestly and through orderly approaches to bring into law the kinds of civil rights measures which have been enacted into law in recent years. On the other hand, there are those who, in the name of racial equality or perhaps more accurately in the name of a new racial superiority, have not advocated further civil rights legislation but, in fact, have actively spoken and fought against measures such as the administration has been trying to have enacted. They have no patience with the processes of law. They have incited to riot and have stimulated situations which have made it difficult for legislation to be considered on an impartial and unemotional basis.

There are also groups who have participated in a vicious demagoguery and rioting and violence against minorities—groups who not only contribute nothing to the solution of the Nation's most agonizing inner difficulties but who would also undo what has been achieved through law in terms of the righting of ancient racial injustices.

These groups should know that there are civil rights bills on the Federal books. They will stay there. They will not be withdrawn. They will not be reconsidered. They will not be ignored. They will be enforced. The law is the law. Regardless of personal feelings, the law must and will be obeyed.

I am extremely happy and proud that those Senators who fought against civil rights legislation down through the years have been among the very first to say that once a law is enacted and on the books, it should be obeyed.

Citizens of good intent will recognize that acceptance of that principle is fundamental to the survival of free government in the United States.

I would urge that from now on people who are concerned with the present and future of this Nation and all its people, no matter what their personal feelings may be, will adopt an attitude of personal responsibility toward these critical racial issues. This is no place for mob mentality and its deliberate stimulation. That is not and cannot be a way to solution of the critical question of guaranteeing the constitutional equality of all Americans. In that realm, there is place only for insistence upon recognition of the rights of all; insistence upon obedience to the law; insistence upon the exercise of free speech without wild and violent license.

This Nation has already gone through too many hot summers. This Nation is up against an immensity of problems within and around its cities. This Nation needs the help of every citizen, regardless of race, color, or creed, if it is to find ways and means out of this viscous morass.

The Americans who come back from Vietnam come in all colors, creeds, and races. Let them not come back to a nation which flails in wild rages and counterrages at its grave domestic problems. Let them come back to a nation which moves with a quiet but unremitting determination against its difficulties, which moves in dignity but without surcease against the barriers of human inequity which have had no meaning for these men in Vietnam, and which cannot have meaning any longer for them anywhere in this Nation.

That means, in a sentence, a responsible nation and the word responsible, cannot be emphasized too greatly. It means responsibility in Congress, in the courts, in the executive branch and among all the private groups and organizations in the nation.

This is no time—there is never a time—to be tearing one another apart. There is ever a time, in the words of the President, to sit down and reason. If this principle is not recognized and acted upon, ahead lie grim days for all of us. If it is recognized and acted upon we will yet find the way to the fulfillment of this Nation's high purpose for all of its citizens.

TRIBUTE TO SENATOR HART AND OTHERS

Mr. President, the Senior Senator from Michigan once again has demonstrated so ably his unsurpassed leadership qualities. His faithful vigil on the floor of the Senate following his motion that the Senate proceed to the consideration of the 1966 Civil Rights Act, his forthright and articulate response to those opposing his motion and his undaunted and vigorous advocacy on its behalf all serve to mark Senator HART as a truly outstanding Senator.

It should be emphasized that a majority of the Members of this body agreed with him, which in itself is a great achievement. Indeed, the Senate's failure to invoke cloture can be laid only to the fact that, in the final analysis, Senators vote in accordance with the dictates of their conscience. And this is as it should be. Throughout the debate the views of the opposition were strong, but even more important, they were sincere.

Others are to be commended for assisting in the attempt to get the business of civil rights before the Senate. The Senior Senator from New York [Mr. JAVITS] was most helpful and typically articulate in this respect—as were the Senators from Massachusetts [Mr. KENNEDY], North Dakota [Mr. BURDICK], and Pennsylvania [Mr. CLARK]. There were, of course, many others, but above all we are today indebted to Senator HART for his indefatigable efforts in leading the fight for civil rights.

Mr. WILLIAMS of New Jersey. Mr. President, as a cosponsor of the civil rights bill, I am deeply disappointed at the defeat of this measure. Our failure to make adequate restitution to our colored citizens for the years of shame and degradation to which they have been subjected continues to be a national disgrace. To those who claim to defend the rights of States, I can only say that the

jury selection provisions of this bill would only have strengthened the system of law which has protected those rights through the years. To those who deluded themselves and their constituents into thinking that the open housing provision were an invasion of sacred property rights, I can only say that in my own State of New Jersey, we have had a stronger housing law than envisioned by this bill for years, and it has served to strengthen and improve relations between the races. To those who oppose stronger measures of protection for civil rights workers, I can only say that we in the Senate must hang our heads in shame for condoning by default the bitter violence of distorted minds. I want to pledge myself here and now to continue this fight in this Congress, in the 90th Congress, and so long as I serve in this body. Until we give some modicum of justice and protection to our colored citizens, the phrase, "life, liberty, and the pursuit of happiness" will remain a hollow mockery. I am as determined as ever to make sure that the brilliant dream of the men who founded this Nation will become a reality for every American regardless of race, creed, or color.

Mr. RIBICOFF. Mr. President, just 2 weeks ago we began our consideration of the civil rights bill of 1966. During this time the attention of the Senate and the Nation has been focused primarily on the issue of open housing. This question is dealt in title IV of the bill. But it is only one of nine titles in the bill. The debate on this one proposal has obscured the other important provisions of this legislation. I think it would be worthwhile to review the other aspects of this bill so we may have them firmly in mind.

JURY REFORM

Long ago the Supreme Court declared discrimination in jury selection to be unconstitutional. Yet the practice still persists. In recent years there have been State court findings of discrimination in seven States.

It is beyond dispute that such discrimination constitutes the most rank injustice toward Negroes. It denies Negroes a fair trial. It deprives them of the opportunity to participate in the system of justice in their communities. It prevents Negroes and civil rights workers from securing the full protection of the laws to which they are entitled. The travesties of justice that have been perpetrated in some courts are too familiar to need repetition here.

Under present law the Federal Government may not initiate action to eliminate jury discrimination in State courts. The Justice Department may only intervene in jury discrimination suits brought by private litigants. Such suits, however, seldom have a salutary effect since they usually result in increased community prejudice against the Negro and his lawyer.

It is too late in the day to say that the States should be left to solve this problem. They have had more than enough time to do so and they have not. Now is the time for Federal action.

The civil rights bill of 1966 contains three basic provisions regarding the composition of juries in State courts.

First. It prohibits discrimination in State jury selection processes because of race, color, religion, national origin, sex or economic status.

Second. It authorizes the Attorney General to enforce this mandate by civil injunctive proceedings against State jury officials.

Third. It establishes a discovery mechanism to facilitate determination of whether discrimination has occurred in the jury selection process. This is a fair and reasonable means of insuring that Negroes enjoy one of the basic rights of citizenship.

The situation in the Federal courts is somewhat different. There, the problem is not so much discrimination, but lack of uniformity. The most common method of jury selection is key man system. Under this plan, the key man submits names of people whom he believes to be suitable for jury duty. Inevitably, he selects those with whom he is acquainted. This does not always guarantee a representative cross section of the community will be included in the jury lists.

To bring about the desirable uniformity in the Federal courts, the bill establishes a positive plan to assure fair selection of jurors. It specifies that voter registration lists will be the exclusive source of names for jurors. It then goes on to set out definite requirements for the selection of names from the voter rolls and details mandatory procedures for each subsequent step in the selection process. Finally, it provides a challenge mechanism for determining whether the proper procedures have been followed.

Mr. President, the right of a fair trial is basic to our free society. There can be no effective system of criminal justice which does not zealously guard this right. It is plain that millions of our citizens do not now enjoy this right. The bill provides a reasonable way to guarantee this right.

CIVIL RIGHTS INJUNCTIVE RELIEF

This title has been before us in every civil rights bill since 1957. It would grant the Attorney General authority to initiate civil proceedings for injunctive relief against public officials or private individuals who engage in a pattern or practice of resistance to the exercise of rights under the Constitution. In these suits the Attorney General would be seeking to vindicate the Federal interest in a civil rights controversy. For example, this title would permit the Attorney General to sue to protect the right of civil rights workers to engage in lawful protests and demonstrations. This title will fill an important gap in the authority of the Federal Government to deal with civil rights problems. Its inclusion in the law is long overdue and is responsive to a proven need.

TERROR AND VIOLENCE

Mr. President, for the past 5 years our national life has been marred by a series of crimes against civil rights workers and those seeking to exercise their rights. The brutal attacks on the children going to school in Grenada, Miss., are only the most recent example. Medgar Evans was shot from ambush in 1963. Andrew Goodman, James Chaney, and Michael Schwerner were killed in 1964. Mrs. Viola Liuzzo was slain in 1965. The present Federal law is inadequate to punish these crimes.

There must be a Federal remedy for this violence because Federal rights are involved. Our failure to provide it would be an invitation to further outlawry. Title V would make it a Federal crime for a private person to injure, intimidate, or interfere with a person while engaged in conduct related to the exercise of protected rights. Thus a child would be protected while going to school, attending school and on the way home from school. The bill provides a set of graduated penalties for those violating the law depending on whether bodily injury or death results from the crime.

Another feature of the bill is that its protection is extended to persons performing duties in connection with protected activities. For example, a school official involved in implementing desegregation plans would be covered by the bill.

I believe it would be impossible to overemphasize the importance of this title of the bill. Nothing is more disruptive of the peace and order of the community than unpunished violence against citizens. This is what leads people to extreme actions. This is what generates hatred and lasting bitterness between those who must live together.

PUBLIC SCHOOLS AND PUBLIC FACILITIES

It is more than 12 years since the Supreme Court handed down its decision in the school desegregation cases. Yet in the 1965–66 school year only about 1 out of 20 Negro children in the South attended desegregated public schools. Though Congress gave the Attorney General authority to bring school desegregation suits in the Civil Rights Act of 1964, plainly he still lacks tools to fully desegregate them. Title VI is designed to accomplish this. Unfortunately, the House thwarted this intent. But we have an opportunity to rectify this situation and restore the needed provisions.

First. We must give the Attorney General power to act on other than a written complaint. The written complaint requirement frequently subjects the complainant to various forms of retaliation. Moreover, Negroes are frequently unaware of the necessity of a written complaint and have difficulty in understanding the legal technicalities of the procedure.

Second. The House amendment describing suits against private persons who interfere with or intimidate others seeking to exercise equal protection rights as suits for desegregation is unclear. It should be clarified by an appropriate amendment. I pledge to support an amendment of the type intended to be proposed by Senators on the Judiciary Committee to do just this.

OTHER PROVISIONS

Title VII of the bill permits the destruction of certain election records prior to the time set forth in the Civil

Rights Act of 1960 if such action would not interfere with the purposes of the civil rights laws. Title VIII requires the Attorney General to submit an annual report to Congress on the administration of the civil rights laws by the Federal Government.

Mr. President, this bill is broad in scope, but moderate in application. This bill contains many valuable provisions which are responsive to glaring defects in our society.

It is unfortunate that the Senate has failed to carry this important bill to a definitive and final vote.

Mr. KENNEDY of Massachusetts. Mr. President, I would like to associate myself with the remarks of the distinguished senior Senator from Michigan.

It is a sad day, indeed, when a majority of the Senate are not permitted to work their will. It is doubly so when the legislation involved is as important as is this bill.

A great deal has been said about the violence of this summer, and rightly so. Liberty is not license and violence is not a part of our first amendment freedoms.

We are all, quite properly, concerned about the violence of this long hot summer. We all condemn it. We all implore, indeed insist, that there be a stop to the wildness and fury of the civil disorders which have swept across this country.

But I must reiterate again what I said earlier today. We cannot allow our legislative judgments to be determined by the actions of a few, and after all, it is only a few, misguided militants who have engaged in these disturbances.

The great majority of our Negro citizens have not contributed to these disorders. The great majority, quite the contrary, have displayed over the last great decade of change, remarkable forebearance and patience in the face of serious inequities and injustice.

They should not suffer for the errors of others, any more than the white citizens of this country should be judged by the behavior of some citizens of Grenada, Miss. And in any case, the basis of freedoms of American citizens do not depend on the turbulences of the moment.

Right now, Negro Americans—a great many of them are fighting in Vietnam, and serving with great distinction. I think the real question we have to ask ourselves today is whether these Negro Americans can come back to this country, to their country, and enjoy full freedom and opportunity as American citizens? I do not think they can.

That fact is the shame and challenge of American life in 1966. That is the issue which this legislation, which has now been shelved for this season, was addressed to. And that is the issue which will be before us and the Nation in the days to come.

It will not go away and in my judgment, it must be faced, if this Nation is ever to achieve the greatness that is its destiny.

SUBSTANCE OF LEGISLATION SHOULD BE DEBATED—CLOTURE SOUGHT THIS RIGHT

Mr. RANDOLPH. Mr. President, my vote again today to invoke cloture was made known throughout West Virginia. I announced my position on several occasions.

Failure to invoke cloture by a majority vote makes a mockery of the fundamental principle of majority rule under our democratic form of government. I am an advocate of meaningful debate instead of meaningless delay—no matter what the issue is before the Senate.

The invoking of cloture, rather than being a debate-stopper, allows it to begin on the bill itself and brings to a halt time-wasted maneuvering.

On civil rights and all other legislation, a Senator should have the right to debate the substance of the legislation, to offer amendments, to vote on amendments, and to vote for or against the measure itself. He should not have to see his rights to do so blocked by the undemocratic procedure of a minority of Senators talking against placing a bill before the Senate for formal action. Fundamental rights are denied under present Senate rules which need amending. Senators are elected by the rule of majority. Why should not the same rule prevail in the Senate?

Cloture, I repeat, to end a filibuster is not a gag procedure. Failure to invoke cloture when a majority votes in favor is the gag. When a majority of 54 Senators for to 42 Senators against a cloture motion on last Wednesday and the vote today of 52 for and 41 against, fails to bring a measure officially before the Senate for consideration, the result thwarts the democratic process and places shackles on the Senate's ability to do business. This is what happened. I have voted with a majority of Senators to end the filibuster so as to act positively in the Senate, rather than suffer negavitism through being blocked by a minority.

NATIONAL UNICEF DAY—CIVIL RIGHTS LEGISLATION—REVISION OF RULE XXII

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 1283, Senate Joint Resolution 144.

Mr. JAVITS. Mr. President, reserving the right to object, I would like to ask the Senator a few questions, following his fine speech on this matter.

Mr. MANSFIELD. Surely.

Mr. JAVITS. As the Senator has said that a vote against cloture represents a vote against the bill, does the Senator feel that a vote for cloture represents a vote for the bill?

Mr. MANSFIELD. I do not.

Mr. JAVITS. Does the Senator have anything in the way of assurance from the President about proposing to enforce legislation which exists, and how such legislation will be enforced, and appropriations that will be provided for agencies so that these rights may be safeguarded?

Mr. MANSFIELD. I think the President answered that in his request for appropriations. I would suggest that any further questions be directed to the President himself.

Mr. JAVITS. I am not trying to fix blame. I think, as the Senator has said, it is sad enough that we have to engage in this exercise. But it is deplorable that the whole Negro people should stand indicted for the acts of some extremists. I would hope this point might be put in focus by none other than the President himself, because, as the Senator from Montana has said so properly and eloquently, there has been violence on both sides, regrettably.

I beg the Senate's indulgence only for a moment to say that I hope not only that the civil rights laws will be enforced, but that the President will use the great authority of his office—because I fear the results of the frustration resulting from this action; no matter how we voted, as the Senator said, we are all in this together—to see that American private enterprise can do something in respect to training for employment, and to alleviate the open-housing question as much as possible, and that it will alleviate the impatience and the strain which, as the Senator has indicated, may have produced this regrettable result on the floor of the Senate today.

Mr. MANSFIELD. I want to assure the Senator that the President is doing everything within his power, and has ever since he assumed the Presidency. I point out that even before he became President, while he was Vice President he was head of an agency set up to promote equal opportunity both in the private and public field. So I think the President's record will speak for itself The fact that he had many meetings with both the minority leader and the majority leader on the question on which a vote was taken today also answers the question.

Mr. CASE. Mr. President, reserving the right to object, I do not agree that the Senate has completed its responsibility in regard to this matter at this time. I do not think we should set this matter aside on the argument that the decision of the Senate has been made and that, therefore, we should turn to another possible way to handle this matter.

I raise the point that another President, former President John F. Kennedy, by a stroke of his pen did it, and that the present President, by exercising his authority, could take care of the matter of housing.

Mr. MANSFIELD. Before I yield to the minority leader, let me say that the President has considered this matter, and acting on the best advice he received from the Department of Justice, he does not believe he has that authority.

I yield now to the minority leader.

Mr. DIRKSEN. Mr. President, first let me express my appreciation and gratitude to the distinguished majority leader for his tolerance, his sense of fairness, and his cooperation at all times on even a difficult bill like this.

My affection for him is as high as the sky and as deep as Mohole, if I have to pick out something mundane for comparison.

When there was a misinterpretation about my remarks with respect to a judgeship last week, I learned that the

President was slightly irked. I immediately called the President about it.

This afternoon, while there were not too many Senators present on the floor, I made a statement about it. Had the President offered me a judgeship, I would have looked at him with a baleful eye, because we have always operated at arm's length, as gentlemen should. The President does not want me to be a judge. I would be too old to go on the bench, anyway. I could point out a lot of things, but I want this to be understood. If I left a misapprehension, I want to correct it. I corrected it earlier today, because I think I owe it to the President of the United States.

Mr. President, sometimes I am excoriated and pilloried a little about positions I take. I went back and checked the record. I discovered that I introduced the first civil rights bill in the House of Representatives in 1945. In that session I introduced four civil rights bills. I have been pursuing that matter ever since. The record is there for all to see. But when conscience and conviction tell me that a bill is full of mischief, I will pursue any course I can in accordance with the rule book to prevent its enactment and even its being called up before the Senate.

I stated earlier it was a little difficult—and I know the difficulty it was for the majority leader—to see only one or two Senators present in this Chamber day after day.

Certainly speeches have only modest consequences unless there are listeners also. Perhaps Senators did not hear me tell the story about the father in Chicago who wanted to have his daughter go to Wellesley. He got an application blank and filled it out. At the bottom was a little space which asked, "Is she a leader? Give details."

The father wrote: "She is not a leader, but she is quite a good follower."

Pretty soon he got a letter from the dean, who said, "We are delighted to have your daughter. We now have 199 leaders and one follower in the new class." [Laughter.]

Well, we can all orate until the cows come home, but there will have to be some listeners, and the story of what is in the bill has not been told. That is why those who feel as I do were willing to conjoin their efforts in order to spar for time to get this story out to the country. I think we shall succeed.

Mr. MANSFIELD. Mr. President, in my opinion, the distinguished minority leader has been unfairly pilloried in the press and throughout the country. If it will make him feel any better, I want him to know that I also am getting a part of the blame for the defeat of the bill. So perhaps together we can shoulder the burden.

I yield to the distinguished senior Senator from Illinois.

Mr. DOUGLAS. Mr. President, reserving the right to object—and I do not intend to object—may I say that in my judgment, the vote of last Wednesday and the vote today point to the urgent necessity of modifying Senate rule XXII.

On each of these occasions, a majority of the full membership of the Senate—not merely a majority of those voting—voted in favor of limiting debate to 1 hour to a Senator, or a possible total of 100 hours and breaking the filibuster. But because we did not obtain the two-thirds presently required by rule XXII, the bill has been pronounced dead.

On the Senate Calendar——

Mr. MANSFIELD. Mr. President, may we have order?

The VICE PRESIDENT. The Senate will be in order.

Mr. DOUGLAS. Mr. President, may I be permited to proceed?

The VICE PRESIDENT. There will be order in the galleries as well as on the floor.

The Senator from Illinois may proceed.

Mr. DOUGLAS. On the calendar, we have Senate Resolution 8, which I, in conjunction with a very large number of other Senators, introduced at the opening of this Congress, early in 1965.

It provides that after approximately 2 weeks' debate, debate could then be limited to 1 hour to each Senator, with the time transferable on a motion, which would certainly permit ample time for discussion.

We also have Senate Resolution 6, introduced by the Senator from New Mexico [Mr. ANDERSON] and the Senator from Kentucky [Mr. MORTON], providing that limitation of debate could be invoked by 60 percent of the membership of the Senate.

Both of those resolutions have lain on the calendar ever since the 9th of March, 1965, and have not been motioned up. I grant that it probably would be impossible, with the present composition of the Senate, to obtain a vote on those measures.

The VICE PRESIDENT. Will the Senator suspend? It is impossible for the Senate to hear the remarks of the Senator from Illinois. The Senate will be in order.

The Senator may proceed.

Mr. DOUGLAS. I grant that with the present composition of the Senate, it would probably be impossible to get these measures voted upon, because they would be filibustered; and, once rule XXII has been adopted either implicitly or explicitly, it is difficult to break through.

There was, however, a general understanding when the resolutions were reported to the Senate that no rights possessed by the movers at the opening of the session would be abridged or denied. I shall not move to have them brought up during the current session of the Senate. But I do believe that when the next Congress convenes in January, these issues should not be swept under the rug once again, but that we will proceed to the question of whether we want to operate under the existing rule XXII, where one more than one-third of the membership of the Senate, or more precisely one more than one-third of those voting, can prevent a measure from even being considered.

I think this rule is archaic; it is a fundamental denial of democracy, and the Senate cannot permanently, in good conscience, permit it to continue. The recent experience should make this obvious.

Mr. MORSE. Mr. President, reserving the right to object to the unanimous-consent request of the Senator from Montana——

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. MORSE. I yield.

Mr. MANSFIELD. Mr. President, I have been informed that there will be further objections; so I should like at this time to rescind my unanimous-consent request.

Mr. President, I ask unanimous consent that the Hart motion to proceed to the consideration of the civil rights bill be withdrawn.

Mr. JAVITS. I object.

The VICE PRESIDENT. The mover has the right to withdraw the pending business. He does not have to have unanimous consent. The Senator from Michigan, who was in charge of the bill, may withdraw his motion to take up.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. JAVITS. Who has the right to withdraw a motion, the majority leader or the maker?

The VICE PRESIDENT. The maker of the motion.

Mr. JAVITS. Then the request of the Senator from Montana is out of order, and I make the point of order.

ORDER FOR ADJOURNMENT

Mr. MANSFIELD. Mr. President, I am afraid we are getting into technicalities. We are not accomplishing anything, and we are beginning to look a little foolish, at the same time.

I ask unanimous consent that when the Senate completes its business today, it adjourn until 12 o'clock noon tomorrow.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. MANSFIELD. This, as I understand it, will kill the motion to take up civil rights.

The VICE PRESIDENT. The Senator is correct.

Mr. JAVITS. Mr. President, reserving the right to object, and I do reserve the right to object——

Mr. MANSFIELD. Object to what?

Mr. JAVITS. To the unanimous-consent request just made.

Mr. MANSFIELD. It has been agreed to.

The VICE PRESIDENT. The Chair had orally ruled; the request had been agreed to.

Mr. JAVITS. That was not the understanding of the Senator from New York, Mr. President.

Mr. MORSE. Mr. President, the Senator from Oregon was seeking recognition to reserve the right to object. I did not intend to object. I have a very brief statement.

Mr. MANSFIELD. Mr. President, I ask unanimous consent, then, in the interests of orderly procedure, that the unanimous consent to adjourn until tomorrow be rescinded.

The VICE PRESIDENT. Without objection——

Mr. MORSE. Mr. President——

The VICE PRESIDENT. The Senator from Oregon is recognized.

Mr. MORSE. Mr. President, I was trying to say I did not intend to object to anything; I just wanted the RECORD to show my point of view.

I want the RECORD to show, Mr. President, that I respectfully disagree with my leadership in the laying aside of the civil rights bill. There is no issue of greater importance to the domestic tranquillity of this country than the issue of civil rights. This course of action will be misunderstood by millions of Americans; it plays right into the hands of the white extremists and the black extremists. I think it is going to arouse mistaken ideas on the part of many people, including some who will think that we are starting to develop, now, an apartheid policy in the United States.

Mr. President, a solution to the civil rights crisis that confronts this country—and it is a crisis—calls upon Congress to carry out its legislative duty and trust; and I do not think it should proceed with any other business until it fulfills that trust. In my judgment, the adjournment of this Congress without passing civil rights legislation will cause great strife within the commonweal, and I think that Congress will be rightly charged with the failure to carry out its obligations.

We are following a course of action that is going to encourage extremism in this country.

I agree with my majority leader. We have a duty to pass legislation to assure the maintenance of a system of government by law.

I speak most respectfully when I say that I think a great legislative mistake will be made by the Senate this afternoon if it goes along with laying aside what I consider to be the No. 1 domestic issue confronting us.

I want the RECORD to show that I do not associate myself with that program, but file this respectful dissent.

The PRESIDING OFFICER (Mr. MONTOYA in the chair). The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I have never engaged in maneuvers to disturb or embarrass the majority leader or in doing vain things.

Mr. MANSFIELD. The Senator is correct.

Mr. JAVITS. I would like to explain my position to the Senate. I think that the Senator from New Jersey [Mr. CASE], the Senator from Oregon [Mr. MORSE], the Senator from Michigan [Mr. HART], I, and many other Senators, and the majority of the Senate having voted for cloture, have a right to express our protest to a course of action taken pursuant to the unanimous-consent procedure, for, unless somebody objects, it must be assumed that everybody agrees.

I feel that the Senate is engaging in a very unwise act for the country, to say the least, and presenting a new element of danger for the country in what I think the Senator from Oregon has properly called the No. 1 domestic issue facing the country.

We should take a minute to express our dissent and dissatisfaction. We are not children. We know that a rollcall will produce far more votes than ever.

The majority leader has the right to decide on calling up a bill. That is not my point.

I will not stand in the way of anything that the majority leader wants to do. However, we should have an opportunity to have our say and register our protest and not, by unanimous-consent determination, have our consciences charged with having stood silent on the question of displacing this business, when we know very well it is the wrong thing for our Nation to do.

I would not wish to stand in the way of whatever procedure the majority leader wishes to follow, other than unanimous consent of the Senate, to make the management shift which he feels is advisable and which I protest against.

I think we all bear a very heavy responsibility to see that this action which we are taking does not work out disastrously for many communities in our country.

I think it is a very small minority of Negroes which is preaching this idea that they cannot depend on the Government of the United States to do justice.

We have done a great deal by the passage of our laws. However, that minority can grow, and greatly, unless we give some redress to its grievances.

Mr. President, I do not stand here and say that what we are doing today will touch off more riots. That would be outrageous. It would be doing exactly what I condemn. However, I do say that this is not taking a step that will be helpful. I hope it is not a step that will hurt us.

The responsibility is a matter for all of us, including especially the President of the United States. The Senator from New Jersey [Mr. CASE], I, and others have said there are many things the President can do to see that this does not hurt us.

We will be back in January for rule XXII changes and civil rights legislation, but let us not erode the ground upon which we stand today.

That is the reason why I hope the majority leader will not compel us to act by unanimous consent this afternoon.

Mr. HART. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield to the Senator from Michigan.

Mr. HART. Mr. President, I want, first of all, to thank all of our colleagues for their patience these last 2 weeks, and to thank my colleagues on this side of the aisle for voting by a heavier vote for cloture in 1966 than we did in 1964. We obtained cloture on both occasions.

I thank those on the other side of the aisle who courageously supported that effort, notwithstanding the changed circumstances.

Most of all, I am grateful to the able Senator from Montana, our majority leader, for his understanding.

As the Senator from New York [Mr. JAVITS] said, let us not go home thinking that perhaps this will all go away and that there will not be any effort for a civil rights bill next year if, by the time we get back, all semblance of racial discrimination in the selection of juries has been eliminated, if there is a cross section in the composition of juries, if public facilities are opened more rapidly to all Americans who finance those facilities, if violence directed against Americans who seek to exercise their constitutional rights has stopped or if, where it does occur, there is effective sanction applied—and if the returning veteran finds that he can shelter his family without running a color test.

However, if these changes do not occur in the interval, there certainly will be and should be legislation. I hope that the parliamentary rule will enable the majority to express its will the next time, because I interpret the 54 votes for cloture as pretty largely a vote for the 1966 act.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. CLARK. Mr. President, I endorse what the Senator from Michigan has just said and the comments of the other advocates of the civil rights bill of 1966.

I endorse the bill. I would like to stress particularly the need for senatorial reform as evidenced by the fact that twice within 1 week a majority of the Senate has been unable to act when it was ready.

I have said so often that it has become a cliche that ours is the only legislative body in the civilized world which is unable to act when the majority is ready for action.

I think those of us who support civil rights and, but more importantly, those of us who support the reputation of the Senate as an effective legislative body should give long, deliberate, and hard thought to the whole issue of congressional reform and come back prepared to act and act in a meaningful way next January, not only because of civil rights—a cause which is close to my heart—but also because of the shambles which has been made of legislation in the Senate day after day, month after month, and year after year, for almost 100 years because of our inability to discipline ourselves and to provide for the common rules of orderly procedure which are carried into effect by every other important legislative body in the civilized world.

ADJOURNMENT

Mr. MANSFIELD. Mr. President, I move that the Senate stand in adjournment until 5 minutes after 3 o'clock this afternoon.

Mr. MORSE. Mr. President, reserving the right to object, I did not hear the request.

The PRESIDING OFFICER. The motion was that the Senate stand in adjournment until 5 minutes after 3 o'clock this afternoon.

Mr. MORSE. Mr. President, will the Senator explain the reason for that?

Mr. MANSFIELD. The reason is to get to a new legislative day. It will dispose of the pending motion.

The PRESIDING OFFICER. The motion is not debatable.

Mr. MORSE. It may not be debatable, but it is objectionable.

The PRESIDING OFFICER. The motion is not debatable.

Mr. MORSE. If it is a unanimous-consent request, I object.

Mr. MANSFIELD. Mr. President, I withdraw my motion so that the Senator can raise his question.

Mr. MORSE. I am just seeking to find out what the procedure is. I have my responsibility to protect myself under the procedure.

Mr. MANSFIELD. Mr. President, the leadership has been informed that if a unanimous-consent request is made to proceed to other business this afternoon, there will be an objection. In order to get on with the business of the Senate, I have moved that the Senate adjourn for 5 minutes in order to start a new legislative day and thus permit by motion the conduct of other business on the Senate Calendar.

Mr. MORSE. I think it is a wise procedure. I go along with it.

Mr. MANSFIELD. Mr. President, I renew my motion.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana that the Senate adjourn until 5 minutes after 3 this afternoon.

The motion was agreed to; and (at 2 o'clock and 59 minutes p.m., on Monday, September 19, 1966) the Senate adjourned until 5 minutes after 3 p.m., the same day.

AFTER ADJOURNMENT

MONDAY, SEPTEMBER 19, 1966

The Senate met at 3 o'clock and 5 minutes p.m., pursuant to adjournment.

Hon. WALLACE F. BENNETT, a Senator from the State of Utah, offered the following prayer:

Our Father in Heaven, we honor the custom of the Senate to open all its sessions with prayer, which on this occasion brings us to what might seem to be a useless formality. Touch our hearts and make it more than a formality.

This afternoon we find ourselves in the position where there has been sharp disagreement, some sharp disappointment. Help us in this condition, and whenever it is repeated, to broaden our understanding. Help us to see the point of view of the men who may have voted in a way opposite to the way we voted.

Help us to realize that we are Members of a body which is faced with the constant responsibility of resolving controversy; help us to take the sting out of the decisions that we must make; so that our service in the Senate, and our service to the people and to Thee, may be in the name of Thy Son, Jesus Christ. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 19, 1966.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. JOSEPH M. MONTOYA, a Senator from the State of New Mexico, to perform the duties of the Chair during my absence.

CARL HAYDEN,
President pro tempore.

Mr. MONTOYA thereupon took the chair as Acting President pro tempore.

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Monday, September 19, 1966, legislative day of Wednesday, September 7, 1966, was dispensed with.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. BIBLE, from the Committee on the District of Columbia, with amendments:

H.R. 15857. An act to amend the District of Columbia Police and Firemen's Salary Act of 1958 to increase salaries of officers and members of the Metropolitan Police force and the Fire Department, and for other purposes (Rept. No. 1609).

LIMITATION OF STATEMENTS DURING MORNING HOUR

On request of Mr. MANSFIELD, and by unanimous consent, statements during the morning hour were ordered limited to 3 minutes.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed, without amendment, the following bills of the Senate:

S. 3261. An act to authorize the Secretary of the Interior to convey certain lands in the State of Maine to the Mount Desert Island Regional School District; and

S. 3421. An act to authorize the Secretary of Agriculture to convey certain lands and improvements thereon to the University of Alaska.

The message also announced that the House had agreed to the amendment of the Senate to the bill (H.R. 16330) to provide for extension and expansion of the program of grants-in-aid to the Republic of the Philippines for the hospitalization of certain veterans, and for other purposes.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled bill (H.R. 16367) to extend the benefits of the War Orphans' Educational Assistance program to the children of those veterans of the Philippine Commonwealth Army who died or have become permanently and totally disabled by reason of their service during World War II, and for other purposes, and it was signed by the Vice President.

SEA-GRANT COLLEGES

Mr. BARTLETT. Mr. President, I would like to take this opportunity to commend the Senator from Rhode Island [Mr. PELL] for the fine work he has done in connection with the sea-grant college and program legislation recently passed by the Senate. The Senator from Rhode Island [Mr. PELL] took the lead in drafting the legislation, holding hearings as chairman of a special subcommittee and in managing the bill on the floor of the Senate.

Mr. President, we all have hopes that the sea-grant college bill will do for the development and exploitation of our marine resources what the land-grant colleges have done for our agricultural development. The legislation provides for Federal support of education of skilled manpower including scientists, engineers and technicians; applied research toward the necessary techniques, facilities, and equipment; and advisory services to disseminate findings to marine industries and other research or educational institutions.

This support will be provided in the nature of Federal "sea grants" to colleges and other qualified institutions for programs of education, research and advisory services. The institutions will create programs based upon their own ability to operate them and the National Science Foundation, the administering Federal agency, will determine which programs are feasible.

Under the Senate version, a program of $45 million over 3 fiscal years is authorized. The program will commence in 1967 at $10 million, continue in 1968 at $15 million, and reach $20 million in the third year, 1969.

The sea-grant program will not duplicate or overlap other Federal programs of assistance to marine resource industries and although colleges will be the primary base for these programs, any institution, agency, or industry, public or private, with a sound proposal is qualified to receive support either directly from the foundation or through a cooperative arrangement with an institution of higher education.

Mr. President, my State, Alaska, has vast marine resources ranging from salmon, halibut, and king crab to oil and gold. Alaska's future depends a great deal upon the development and exploitation of her water resources.

A short time after statehood, the Alaska Legislature charged the regents of the University of Alaska with setting up at the university a program of "research and education in biological, chemical, and physical oceanography and related topics." Although the Institute of Marine Science established was modest at first it has quickly expanded to the point where today the university is in a posi-

tion to offer graduate degrees in biological, chemical, physical, and geological oceanography, fishery management, and in some aspects of submarine geophysics. The new sea-grant program will mean a great deal to the university's Institute of Marine Science.

Mr. President, I ask unanimous consent that a letter received from K. M. Rae, vice president for Research and Advanced Study at the University of Alaska and a report he provided me on the Institute of Marine Science at the university be printed in the RECORD at the conclusion of my remarks.

Mr. President, while the sea-grant program will be a benefit to institutions of learning in providing assistance in connection with various research programs, it goes beyond that.

The sea-grant program will directly help the fisherman and the industry by emphasizing the immediate application of technological advances and the imparting of knowledge of scientific discoveries to those actively engaged in all phases of marine work.

Mr. President, I am pleased by the favorable action taken on both sides of the Capitol on the sea-grant program. This measure, in my view, is one of the most meaningful bills to receive action in this Congress. The Senator from Rhode Island [Mr. PELL] and others who worked for and supported the legislation have made a significant contribution to our future as a maritime nation.

There being no objection, the letter and report were ordered to be printed in the RECORD, as follows:

UNIVERSITY OF ALASKA,
College, Alaska, June 17, 1966.

Hon. E. L. BARTLETT,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BARTLETT: We have your letter about S. 2439, the National Sea Grant College and Program Act. We are sorry it has not been answered earlier.

Enclosed are some brief notes outlining the history and the present scope of our Institute of Marine Science. I hope these will provide the basic answers to your questions. We will be only too happy to provide supplementary information on any points you may wish to raise.

Many of us, who are interested in marine science in Alaska, have followed the concept of the Sea Grant College closely since it was first mooted by Spilhaus at the A.F.S. meeting in 1963. Indeed, we were represented at the Rhode Island meeting last fall and several of the faculty have been asked to comment on the idea and its implications by various scientific committees.

Geographically, of course, Alaska has a prime claim to support under the program if, or when, it is implemented. The huge extent of the coastline and adjacent shelf waters, the relatively high dependence on income from traditional fisheries, the newfound off-shore oil potential, are justification enough for concentration of education and technological research within the State. The newer concepts of marine exploitation are no less so. There is a tremendous backlog of research to be done in the Northern Pacific but even more so in the Bering, Chukchi and Beaufort seas. And there can be little argument against the wisdom of conducting training and research within the environment under which the results are to be used.

Again, we believe our present—and very rapidly growing—competence in the Institute of Marine Science, the Geophysical Institute and the Arctic Environmental Engineering Laboratory will stand us in good stead in national competition. I understand there are now about 70 schools in the United States offering curricula in oceanography and one can count a similar number of research institutions, private and state. However, there is a great diversity in the size of the activities involved and we can feel confident that we are now in the top quarter, despite the heavy concentration of federal support in the largest few.

We will, of course, be most grateful for your efforts on our behalf. And, please let us know if there is anything we can do towards providing more information.

Yours sincerely,

K. M. RAE,
Vice-President for Research and Advanced Study.

Enclosures.

UNIVERSITY OF ALASKA INSTITUTE OF MARINE SCIENCE

The Institute of Marine Science came into being in 1960 when the State Legislature charged the Regents with setting up within the University a program of ". . . research and education in biological, chemical and physical oceanography and related topics." The first appointment, a director, was made in May 1961 and since then there has been rapid growth in these activities.

The present faculty comprises 16 full-time professional staff of whom 12 hold doctorates in relevant disciplines. In addition there are about 25 people on the support staff, and there is a growing enrollment of graduate students. The Institute is now under the direction of Dr. D. W. Hood who joined the University in 1965.

The shore facility, the Douglas Marine Station, is a converted school building of some 5,000 sq ft, now modified and well equipped for marine geology and biology. Recently a second building of 12,000 sq ft has been acquired, nearby, on Douglas Island. This is being converted to provide additional laboratory space, workshops, storage, and faculty and student accommodation.

Early in 1964, a new facility was completed on the campus with a matching grant from N.S.F. This involves some 8,000 sq ft of highly modern research space, entailing specialized laboratories for mass-spectrometry, radio-isotope work, and controlled temperature rooms. With a projected rapid expansion, plans are advanced for additional new laboratories and offices on the campus.

In the fall of 1964, the Office of Naval Research put the R/V ACONA at the disposal of the Institute. She is an 80-ft, specially designed, oceanographic vessel built only three years earlier. The cost of operation, about $150,000/year is shared by N.S.F. and O.N.R. through grants and contracts. In 1965 a second vessel, a 43-ft trawler, was obtained for inshore work.

A list of the current research projects receiving outside support is attached. Although these are not co-terminous, or applicable to a single fiscal year, they amount to something in excess of $\frac{1}{2}$ million. To this the State adds $160,000/year as a line-item in the University appropriation.

Soon after the inception of the Institute a few graduate students were accepted. Because of shortage of space and the limited areas of specialization of the few faculty, only candidates who already had masters' degrees (or equivalent) were accepted. This permitted a tutorial system of education and reduced the need to set up formal course offerings in face of small enrollment. In 1965, the first two candidates received their Ph. D.'s in marine science.

Since then the increased faculty has permitted a more general program. Graduate courses have been set up in the various teaching departments and so full instruction can be offered to students holding a bachelor's degree in a relevant basic discipline. The consensus of the faculty is against establishing an undergraduate degree program in marine science (oceanography); while the topic is essentially interdisciplinary, a strong background in one of the contributing disciplines is, in our view, necessary.

Now, the University is in a position to offer the following degrees associated with the sea:

M.S. and Ph.D. in biological-, chemical-, physical- and geological-oceanography (although we tend to use the construction 'marine science').

M.S. in wildlife management (fisheries).

M.S. and Ph.D. in some aspects of marine geophysics.

Plans are under way for programs in Ocean Engineering and Marine Products Technology. The question of a Law School at the University is also under discussion and the need for training in maritime law has been prominent in this consideration.

However, in the 'Sea-Grant' concept, there are other activities at the University, outside the Institute of Marine Science, to be considered. The Geophysical Institute has plans to develop a strong program in physical oceanography and in air-sea surface interaction. There is already a program in underwater seismology. We have had a long-standing program on the properties of sea-ice in the Arctic Environmental Engineering Laboratory; the Institute of Water Resources Research has recently started an exciting project on desalination by natural freezing. Also in the general area of ocean engineering, the faculty has been providing consultant services on the design of offshore oil-rigs in the Cook Inlet.

The University has not heretofore been active in applied fishery research. This, of course, is not to say that our biogeochemical research is irrelevant to a better understanding of exploitation of marine biological resources; the reverse is the case. But under present arrangements, the responsibility for exploratory fishing, assembly of catch statistics, annual catch projections, processing technology, *etc.*, are vested in the State Fish and Game Commission and the U.S. Bureau of Commercial Fisheries. The University's role has been that of collaboration and the provision of the more basic background information. This situation may well change should different sources of non-State funding materialize. We do, nevertheless, provide advice to commercial fishermen through the Extension Service; lectures are given regularly by a full-time expert in the various fishing centers. We hope to add more people to the staff for this function.

NEW YORK CITY'S POOR EXCEL IN LEADING SUMMER ANTIPOVERTY PROGRAMS

Mr. JAVITS. Mr. President, the Economic Opportunity Act of 1964 embodied what was to some a startling concept—the idea that the poor should themselves participate significantly in the planning and administration of local antipoverty programs. It was an idea founded on the belief that massive social and economic improvement could best, and perhaps only, be achieved if the target communities became caught up in the effort and made the Government's

program their program. Self help is the best kind of assistance, and examples of the success of this approach in the poverty field are accumulating rapidly.

In particular, Mr. President, I would point to the superb results achieved in New York City's special summer antipoverty program. As an article appearing in the New York Times of September 12, 1966, points out, 226 of the summer program's 332 projects were run by so-called indigenous groups—local neighborhood organizations. Some 5,591 poor people from the communities involved as well as many of the 4,367 impoverished teenagers employed by the Neighborhood Youth Corps provided the primary staff assistance; only 2,505 teachers, social workers and other professionals were hired.

The success of these programs is testimony to the value of the community action concept. Plans for the future have been drawn up by many of the numerous neighborhood groups which participated in these summer programs, and some flicker of hope and interest has been aroused in thousands of individuals never before reached by more traditional programs. Now that the program is underway, the Congress should see to it that sufficient funds are provided to keep it underway and to prevent the loss of hard-won ground.

I ask unanimous consent that this article by John Kifner in the New York Times be inserted in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CITY'S POOR EXCEL IN LEADING POOR—RAN MORE THAN HALF OF 332 SUMMER PROGRAMS, WITH 50 TO BE CONTINUED

(By John Kifner)

Mothers on welfare organized day camps; teenagers were trained as electricians, secretaries, nurses aides and commercial artists; children who had never ventured beyond their slum blocks stared wide-eyed at the Statue of Liberty, and the trees and caged porcupines at Bear Mountain state park.

These were some of the pieces of a quiet, sometimes faltering revolution in the city's antipoverty program this summer.

For the first time, city officials sought to put the program directly in the hands of the poor. Of the summer program's 332 projects, 226 were run by what antipoverty workers call "indigenous groups"—local neighborhood organizations.

The programs were staffed by 5,591 poor people working in their own communities and by many of the 4,367 teenagers employed for the summer by the Neighborhood Youth Corps. Only 2,505 teachers, social workers and other professionals were hired.

SOME WILL CONTINUE

The summer before, 33 programs were run by large, established agencies and city departments, with grants of $2.7-million. The rest were handled by Harlem's Haryou-Act with $3.5-million.

The city had more to spend this summer—$10.5-million in Federal funds—and was able to reach beyond the most publicized poverty areas of Harlem, Bedford-Stuyvesant and the Lower East Side to finance programs in more than a dozen deeply impoverished, but lesser known neighborhoods.

All told, this summer's projects reached 300,000 to 500,000 persons, antipoverty officials say.

"Their success," says Richard Buford, the special assistant to the Mayor who directed the summer programs, "shows that poor people can help themselves if they get half a chance."

With the summer over, however the programs, successful or not, had been scheduled to die. But now some of them will continue until December.

"The thing that's really painful," Mr. Buford had said, "is to see the whole damn thing fall apart just because you haven't got the money."

The prospect was painful for the people in the poverty projects as well, and many complained that the program's purpose was simply to head off summer riots.

The explanation by Federal officials that the September cut-off was necessary because of limited funds was undermined when a $400,000 grant was produced for fire-hydrant sprinkler heads and swimming facilities in mid-summer.

NOW AVAILABLE $400,000

The special program was hurriedly put together over a weekend after President Johnson learned that four days of racial violence in Chicago had been touched off when the police turned off a hydrant that slum children had turned on.

After considerable pressure on New York's new Human Resources Administration by local groups and by some of its own staff members to continue projects, officials agreed to use about $400,000 of Federal funds not used during the summer to extend the life of 50 small programs through December.

"There are all kinds of people now involved in real, meaningful community action for the first time," Mr. Buford said. "They don't understand the logic, and I don't think there is any, of building up a lot of hopes and good programs, and then letting them expire at the beginning of September."

The approach to the summer's projects was unorthodox from the start. Instead of following the usual procedure of parceling projects out to large agencies, city staff workers held hundreds of meetings in the spring with neighborhood groups, block associations, churches, and clubs in poor neighborhoods to find out what they wanted and worked with them in preparing programs.

"The programs really reflected what these people wanted to do," said Christopher Weeks, a former assistant to R. Sargent Shriver, director of the federal Office of Economic Opportunity, who ran the program's day to day operations.

"But it was so widespread and seemed so chaotic that Washington was really worried," he recalled. "They were afraid it was going to be one of the major disasters of the poverty program.

"What everybody underestimated was the capacity of these block associations and the poor people to run their own projects. This was a smashing success—and the people on the street did it themselves."

CONFLICT BETWEEN OFFICIALS

The program was still plagued with many of the difficulties and last-minute crises that have haunted the city's efforts to aid the poor. In the spring antipoverty officials were hampered in planning because they did not know how much money they could expect. When the program was finally submitted, its approval was delayed by the conflict between city and federal officials over how much antipoverty money the city could receive.

Approval came only three days before the program was to start, and despite frantic efforts by antipoverty workers to clear the money through a maze of city offices and regulations, most of the programs got under way two or three weeks late.

Antipoverty workers in the summer program obtained bank loans and advances for the troubled projects, and set up a system of consultants to help the inexperienced groups with their problems.

When Thelma Johnson, the program's staff director, was tearfully given bouquets of flowers at a performance of the Bronx Community Action Theater last week, it was a new departure: local groups are normally in a mild state of war with the city authorities.

"If it hadn't been for the banks, we would have been ruined," said Mr. Weeks. "But after we got going we had more problems with the establishment groups than the poor ones. The Archdiocese in Brooklyn was trying to charge admission to their day camps—we had to put a stop to that right away."

The archdiocese could not be reached for comment yesterday.

A SHOWCASE PROJECT

One of the projects the city is proudest of is on Fox Street, between Longwood Avenue and 156th Street in the Hunt's Point Section of the Bronx. Fox Street is regarded by Welfare, Housing and Police officials as one of the worst streets in the city. The project is five blocks from where touring Buildings Commissioner Charles G. Moerdler was solicited by prostitutes and attacked with a barrage of bottles Wednesday night.

Almost every window and fire escape of the normally grim brick buildings on Fox Street was festooned with brightly colored crepe paper and paper chains and lanterns the other day, as the project's day camp held a party. Hundreds of children and adults, many of them wearing T-shirts that said "Fox Street Concerned Youth," twisted to the Supremes' recording of "You Can't Hurry Love" over a loudspeaker.

The program, called the Concerned Parents of Fox Street, is directed by Mrs. Esmay Robinson, a former welfare client, and most of the staff is composed of mothers on welfare.

CYNICISM OF THE SLUMS

"I know there hasn't been 100 per cent improvement—the sickness is still there day to day—but we've reached so many people," Mrs. Robinson said, explaining that the group first had to overcome the natural cynicism of the slums and some hostility between Negro and Puerto Rican residents.

The day camp enrolled more than 400 children, and the group organized Welfare mothers and told them of their rights under the law—they have received more than 900 complaints against the Welfare department since the beginning of July—and provided information on birth control and better consumer buying methods.

As the organization became known, other activities developed. Narcotics addicts come in to ask for help, and 8 to 10 a week are brought to city hospitals for treatment, Mrs. Robinson said.

"There's a lot of small changes that are really big in a neighborhood like this," Mrs. Robinson added. "In my building there are usually 3 evictions a month; there haven't been any this summer. You see the supers out in the morning sweeping off the sidewalks—that's really a change. We made one super keep the garbage off the street and he was really surprised; he hadn't done it for 15 years.

"One man—he was sort of defiant—he ran a lottery on the street and everybody stood around drinking whisky and wouldn't move. After a few weeks, he came around and doesn't hold the lottery while we're running the day camp."

There are other changes. In the Corona-East Elmhurst section of Queens, the director

of the local project was attacked early in the summer by a youth gang called the Enchanters. By the end of the summer, the Enchanters were circulating a petition asking that the program be continued.

BUILDING CONFIDENCE

In the basement of Public School 125, at 425 West 123rd Street, 43 teenagers tutored 90 younger children in remedial reading, writing and arithmetic. One of 152 projects stressing education, this one, called Youth Helping Youth, was directed by Miss Annie Brown, who has been tutoring local children in her apartment in the Grand housing project since 1963.

"I saw so many children reading far below level. I thought I'd better do something," she explained. "Many of the children broke down and cried when we gave them tests. We had to reeducate them and build their confidence."

African culture and history—and Latin American history in Spanish-speaking areas—were part of many of the programs in order "to give the children a sense of pride in what they are," one teacher said.

The Puerto Rican children at a day camp run by the United Students of the Americas, 341 West 25th Street, were also taught "the principles of American life."

"That is so they can understand the idiosyncrasy of the American people," explained Enrique Ochoa, a graduate student in economics from Ecuador. "The main thing here is, we're not too scientific—we let our emotions show."

BACK TO SCHOOL

Theater groups put on plays ranging from "The Boy Friend" to a rent-strike version of "Waiting for Lefty"; a puppet theater toured the children's wards of city hospitals; and in Bedford-Stuyvesant a series of weekend dances wound up with a concert by finger-snapping teenage rhythm and blues groups with names like the Del-Fives, the Imperialettes and the Uniques.

In the Far Rockaway Section of Queens, an hour and a half, 40-cent subway ride from Times Square, where Negro Shantytowns are separated from new middle-income cooperatives by cyclone fences, 60 mothers on Welfare—some of whom had dropped out of school 15 years before—learned typing, sewing and hatmaking and studied for high school equivalency tests.

"Its been a wonderful thing," said Mrs. Mary Kelly, as several mothers nodded agreement. "Now we can do things for our children and maybe make a better place out here.

"We might have a chance for a nice job now. We'd like to feel independent—who wouldn't?"

SOME ARE AFRAID

Mrs. Mary Rogers, a blockworker for the League of Autonomous Bronx Organizations for Renewal, which is seeking housing improvements in the Morrisania area sat in one of the group's five storefront offices at 1680 Washington Avenue the other night. She waited in vain for a group of tenants to come to a meeting.

"We go door to door and find out what complaints people have—some of the conditions are just awful" she said. "We see if tenants will get together and we tell them about their rights. But a lot of them are just afraid, and they want to see results before they'll do anything.

"Now, we'll just have to start again on this building."

"You really can't organize people on a ten-week basis," said Marshall England, the director of the group, which also provides free legal service. "First they have to find out that you're for real."

COORDINATION OF FEDERAL GRANT-IN-AID PROGRAMS

Mr. MUSKIE. Mr. President, Congress, in the past 6 years, has made the most wide-ranging and comprehensive attack on the problems of our cities and towns that has ever been made in the history of our country. Rarely has the Federal Government faced so many domestic problems and stimulated so many ideas and proposals for dealing with them.

We have, in the past few sessions of this body, set out on a broad attack on problems dealing with education, housing, urban renewal, air and water pollution, economic opportunity, conservation, mass transit, and community development. We have designed and initiated these programs in the belief that all of the resources of this great Nation should be marshaled for the creation of a society in which every citizen is given the opportunity to realize his aspirations and his highest potential.

But the success of what we have done and what we may do will be only as good as the machinery which carries it to the people in the most effective way possible. The effective administration of these programs is no less important than their substance. And when we talk about administration, we are talking about our Federal system of Government—that unique invention which provides a balance of powers and responsibilities between Federal, State, and local governments.

For some time, now, the Subcommittee on Intergovernmental Relations, of which I am chairman, has been conducting intensive studies of problems of coordination among all levels of government. At the same time, the Advisory Commission on Intergovernmental Relations continues to carry on in-depth studies of problems in this critical field of government.

In line with this growing concern for the problems of federalism, I was pleased to note a recent address by Mr. Harold Seidman, of the Bureau of the Budget, before the National Legislative Conference in Portland, Maine. Mr. Seidman has, it seems to me, clearly identified five key areas which call for a coordinated attack by the Federal Government, in cooperation with its State and local counterparts.

Mr. President, I ask unanimous consent that Mr. Seidman's address be printed in the RECORD for the benefit of Members of Congress who have not read it.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

COORDINATION OF FEDERAL GRANT-IN-AID PROGRAMS

(Address by Harold Seidman, Assistant Director for Management and Organization, U.S. Bureau of the Budget, before the National Legislative Conference, Portland, Maine)

In ancient times alchemists believed implicitly in the existence of a "philosopher's stone" which would provide the key to the of mankind. The quest for coordination is universe and, in effect, solve all the problems in many respects the twentieth century equivalent of the medieval search for a philosopher's stone. If only we can find the right formula for coordination, we can reconcile the irreconcilable, harmonize competing and wholly divergent interests, overcome the irrationalities in our government structures, and make the hard policy decisions.

We are prone to forget that coordination is not neutral. To the extent that it results in mutual agreement or a decision on some policy, course of action, or inaction, inevitably it advances some interests at the expense of others, or more than others. It assumes at least some community of interests with respect to basic goals. Without such a community of interests, there can be no effective coordination. Coordination contains no more magic than the philosopher's stone. It does contain, however, a good deal of the substance with which the alchemists were concerned—the proper placement and relationship of the elements to achieve a given result.

Coordination difficulties are merely the symptoms of much more deeply rooted problems. Unless we have the courage to face up to these basic problems, our efforts to produce cooperation and reduce tension and conflict through new or improved coordinating devices inevitably will be doomed to failure. The core of the problem, as described by Senator EDMUND MUSKIE, Chairman of the Senate Subcommittee on Intergovernmental Relations, is "the difficulty of managing 170 grant-in-aid programs in the 21 different Federal departments and agencies and in over 92,000 units of government throughout our 50 States—counties, municipalities, townships, metropolitan areas, independent school districts and other special districts." If this complex system is to work and we are, in President Johnson's words, "to develop a creative Federalism to best use the wonderful diversity of our institutions", each of the partners in the Federal system must have the capability and the willingness to do his part of the job.

The Federal grant-in-aid is the means by which our system of government is distinguished from every other major power in the world. We have elected as a nation to finance and administer cooperatively with State and local governments a host of essential programs to achieve national objectives, rather than to rely primarily on direct Federal operations. This is no recent development but one which has its roots in the midst of the Civil War when the Morrill Act of 1862 established our present land grant colleges.

In part, our current problems are the natural consequences of rapid growth in the size, number and variety of Federal grant-in-aid programs. In the last ten years Federal aid to State and local governments will have more than tripled, rising from $4.1 billion in 1957 to an estimated $14.6 billion in 1967. In the same ten-year period, expenditures by State and local governments from their own funds will have more than doubled. State and local governments are hard put even to keep track of the almost 400 subcategories or separate authorizations for the expenditure of Federal funds under various grant-in-aid programs.

Size and complexity, however, will present problems only so long as we refuse to adjust to change and to provide the necessary management capability. We cannot expect to manage successfully a multi-billion dollar enterprise with a management system suited to a country store. Measures have been taken at the Federal level to modernize the executive branch structure and to give the

chief executive and the principal department and agency heads under him the authority and staff resources to manage the programs for which they are responsible. Notable landmarks are the Budget and Accounting Act of 1921, which provided for an executive budget, the establishment of the Executive Office of the President in 1939, and the more than sixty reorganization proposals recommended by Presidents Truman, Eisenhower, Kennedy and Johnson which have gone into effect since 1949. Strong central direction and management are now indispensable not only in Washington, but also in the State capitals, city halls and county seats, if we are not to be trapped hopelessly in what Senator MUSKIE has aptly called "a management muddle."

A true partnership cannot exist if one partner is strong and the others are weak. If State and local governments are to be equal partners with the Federal Government in achieving a full and creative federalism, they must overcome the fragmentation of authorities within their jurisdictions and give their principal executives the necessary authority and resources to manage and bring some cohesiveness into the present system. The fragmentation of Federal grant programs in some degree mirrors the fragmentation of authorities at the local level. As a recent study of a northeastern State government phrased it, the view persists that "administrative fragmentation helps to make the executive agencies more responsive to legislative wishes and to popular needs."

There are actions the Federal Government can and must take to improve and modernize the present operation of the Federal system. But can such actions be fully effective if not accompanied by comparable actions by our partners at the State and local level? Can our current needs be met when 31 States continue to hold biennial legislative sessions; 61 percent of the mayors in cities of 100,000 to 500,000 population serve part time; only one county in 100 has a full-time county manager?

I do not share the pessimistic view expressed in the report of the Committee on Economic Development on "Modernizing Local Government" when it stated:

"American institutions of local government are under an increasing strain. Well designed, by and large, to meet the simpler needs of earlier times, they are poorly suited to cope with the new burdens imposed on all governments by the complex conditions of modern life. Adaptation to change has been so slow, and so reluctant that the future role—even the continued viability—of these institutions is now in grave doubt."

I have a deep faith in the strength and viability of our State and local government institutions, but we will postpone further urgently needed reforms at our peril.

Coordination of Federal grant-in-aid programs is a complex and continuing process involving vertical and horizontal communications among and between Federal agencies, State and local governments and their various agencies and actions at each level of government separately and in conjunction with other levels. I have stressed the need for improvements at the State and local level, because I believe the role of State and local governments in this process is crucial. Federal laws set the objectives and establish the ground rules, but the Federal Government cannot make a grant until a local agency initiates action either by providing matching funds or applying for Federal project funds. Without local initiative the programs are inoperative.

The function of establishing State, regional or local goals, developing comprehensive plans, and determining priorities among grant proposals in terms of these goals and their relationship to comprehensive plans and financial restraints is and should remain a local, not a Federal, responsibility. I am convinced that if this job is performed well at the local level it will contribute more to the effective coordination of programs at the Federal level than any other action that could be taken. I am aware of the enormous obstacles which confront State and local governments in performing this responsibility. Federal laws and regulations often complicate the problems. Many communities have no mechanism for collecting current information about the flow of Federal grant funds into their local agencies, much less for coordinating such programs.

I am encouraged, however, by a number of significant developments. Some 28 State governments have established means for an overall consideration of their participation in Federal grant programs. New Jersey, New York, Tennessee, Washington, Alaska and Rhode Island have established State Offices of Urban Affairs for continuing review and attention to problems of local government finance, structure, organization and planning. The National Association of Counties is actively engaged in persuading county governments to establish Federal aid coordinators, and over 150 have already done so. The effectiveness of these coordinators will be limited, however, if they conceive of their job solely as a device to facilitate access to the Federal Treasury and not, in the first instance, to coordinate and provide for the establishment of priorities among county applications for Federal grants. I understand that a number of cities are also creating offices to coordinate Federal aid programs. The establishment of Councils of Governments representing elected officials of general units of government within a region is also a hopeful development and is calculated to facilitate regional planning and coordination.

The Federal Government has a direct obligation, in turn, to scrutinize its policies, organization and operations from the viewpoint of their impact on State and local organization and administration. The studies of the Subcommittees on Intergovernmental Relations of the House and Senate Committees on Government Operations and the Advisory Commission on Intergovernmental Relations have made major contributions in this regard. Their findings provide no grounds for Federal complacency.

The Federal Government needs, in cooperation with its State and local partners, to develop a consistent and coordinated attack on several key problem areas.

1. We must clear some of the brush out of what has been called the Federal grant-in-aid jungle. The profusion of categories and sub-categories of Federal grants constitutes perhaps the single most important source of management and coordination problems. We can no longer afford to establish matching formulas on a case-by-case basis without regard to any general standards or criteria. We need greater consistency in the organizational and administrative requirements imposed by Federal law and regulations and should make certain that differences genuinely reflect special program needs, not merely historical preferences and administrative biases. Means must be devised to provide a more effective input by the general managers, not just the specialists, into the development of Federal regulations. The Bureau of the Budget is tackling the problem of competing and overlapping planing requirements, and we expect to complete our study early this fall. We are also working with the National Association of State Budget Officers to identify Federal grant-in-aid requirements impeding State administration and to simplify accounting and auditing requirements.

2. We are making progress, but much more needs to be done to improve communications both among Federal agencies and with the heads of general units of local government. The President has designated the Vice President and the Director of the Office of Emergency Planning to act as his liaison with mayors and governors, respectively. Federal Executive Boards established in our major Federal Centers are doing much to facilitate communication and are making a special effort to work closely with State and local governments. The Bureau of the Budget supports S. 561, the Intergovernmental Cooperation Act, which, among other objectives, provides for a more effective flow of data to governors and State legislatures.

3. The Federal Government can and should do more to support efforts to enhance the quality of State and local administration. The President has directed the Bureau of the Budget and the Civil Service Commission to advise him on measures to provide Federal support to programs for training State and local officials.

4. We need to adapt our Federal organizations structure and coordinating arrangements to current requirements. Peace treaties among overlapping and duplicating programs at best can offer only temporary relief. Government by committee is a danger to be avoided. The executive order issued only last week by President Johnson assigning to the Secretary of Housing and Urban Development the responsibility to act as a "convener" marks a significant new approach. The Secretary is given the duty to convene special working groups composed of the appropriate Federal agencies involved to identify urban development problems of an interagency or intergovernmental nature, and to promote cooperation among Federal departments and agencies in achieving consistent policies, practices and procedures. The "metropolitan desk" concept being developed by the Department of Housing and Urban Development also has considerable promise.

5. Finally, and by no means least, we must update our Federal field structure. As President Johnson stated in his Budget Message: "We must strengthen the coordination of Federal programs in the field. We must open channels of responsibility. We must give freedom of action and judgment to the people on the firing line."

Any partnership, like a marriage, can never be entirely free of stresses and strains. If kept within reasonable bounds, conflict and tension can be creative, not destructive. We all face some difficult tasks in making creative federalism a practical reality. Working together I am confident we can move forward toward President Johnson's goal of a "Great Society."

ANDREW JACKSON, SOUTH CAROLINIAN

Mr. RUSSELL of South Carolina. Mr. President, some days ago the distinguished senior Senator from North Carolina [Mr. ERVIN] favored the Senate and the Nation with an amusing, if inaccurate, lecture on the birthplace of Andrew Jackson, late President of the United States.

Senator ERVIN is laboring under the misapprehension that President Jackson was born in North Carolina, a notion which will be clearly disabused by a careful reading of "Andrew Jackson, South Carolinian," authored by a distinguished scholar and college president, Elmer Don Herd, Jr. I am forwarding to the North Carolina Senator a copy for his library.

I rise today to place in the RECORD a certificate of birth for Andrew Jackson, which clearly certifies that the late President was born in South Carolina on March 15, 1767, in the township of Waxhaws in Lancaster County.

The certificate of birth is on file in the office of the clerk of court in Lancaster County, Lancaster, S.C.

The certificate was issued by the clerk of court in Lancaster after due consideration of ample evidence which certified as to the circumstances of birth of Andrew Jackson.

Being the immensely able constitutional scholar which he is, I know that the Senator from North Carolina is intimately familiar with article IV, paragraph 1, of the U.S. Constitution, which declares:

Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Mr. President, I trust that our great sister State of North Carolina will abide by the Constitution, and give "full faith and credit" to the birth certificate of Andrew Jackson, which says plainly where he was born—in South Carolina.

I ask unanimous consent that the birth certificate be printed in the RECORD.

There being no objection, the certificate of birth was ordered to be printed in the RECORD, as follows:

CERTIFICATE OF BIRTH

STATE OF SOUTH CAROLINA, COUNTY OF LANCASTER

Office of clerk of court

1. Place of birth:
County of Lancaster.
Township of Waxhaws.
City of ———.
2. Full name of child: Andrew Jackson.
3. Boy or girl: Boy.
4. Color or race: White.
5. Nationality: American.
6. Date of Birth: March 15, 1767.
7. Full name of father: Andrew Jackson.
8. Maiden name of mother: Elizabeth Hutchinson.

I, Lee O. Montgomery, Clerk of Court of Common Pleas and General Sessions for Lancaster County, South Carolina, the same being a Court of record, and having by law a seal, and being the official custodian of vital statistics for Lancaster County, do hereby certify unto all whom it may concern, that there is on file in the office of Clerk of Court for said County the record of birth of the above named from which the above statistical data were obtained, and I further certify that the above date of birth, place of birth, and other information concerning the birth of the above named are true and correct as copied therefrom as filed May 23, 1962; and recorded in volume 65–D, of Births, at page 110.

Given under by Hand and Official Seal of Office at Lancaster, South Carolina, this 23rd day of May, A.D. 1962.

LEE O. MONTGOMERY,
Clerk of Court for Lancaster County, S.C.
By ——— ———
Deputy Clerk.

PENN-CENTRAL MERGER

Mr. KENNEDY of New York. Mr. President, I was pleased at today's action by the Interstate Commerce Commission in reaffirming its April 27 decision regarding the Penn-Central merger. The Commission's maintenance of September 30, 1966, as the effective date of the merger is particularly important to the future of the New Haven Railroad. Early consummation of the merger will insure that continuance of the New Haven's vital passenger and commuter services is not jeopardized by delays in the Penn-Central proceeding. Other problems may well lie ahead for the New Haven, but the ICC's action today assures that it will not be the stumbling block to a longrun solution of the New Haven's situation.

Today's decision is also commendable for its assurance that the ICC will consider further the question of indemnification of the Erie-Lackawanna, Delaware & Hudson, and Boston & Maine Railroads by the merging railroads, and that these three carriers will have an opportunity to seek ultimate inclusion within the Penn-Central system. As the Commission itself points out, further proceedings regarding these three carriers will be governed by the "fair and equitable" language of the Interstate Commerce Act. These three railroads provide important transportation services that must not be neglected, and the Commission's assurances regarding their future are a step forward in developing an approach to keeping these services in operation.

I have supported the concept of a merger between the Pennsylvania and New York Central Railroads since the time that I was Attorney General. It has been and is my belief that such a merger is the first step forward in the development of a modern and integrated transportation system in the eastern part of the United States. Such a system must exist if we are to satisfy the growing needs of this region's citizens for swift and efficient service from city to city and from city to suburb. That is why early consummation of the merger, with adequate provision for inclusion of vital service now being provided by other carriers, is so important to the public.

OTHERS ARE NOW ALSO REVEALING THE TRUTH ABOUT THE UNDECLARED WAR IN VIETNAM

Mr. GRUENING. Mr. President, little by little—trickle by trickle—the truth about the U.S. tragic and needless involvement in a large-scale land war in southeast Asia is coming to light.

Over this last weekend, four important statements appeared in the public press showing the growing fears of an ever-widening group of people concerning the quagmire in which the United States finds itself enmeshed in Vietnam because of its rigidity of position, its failure to face facts, and its consistent adherence to preconceived misconceptions.

Writing in the New York Times magazine for September 18, 1966, under the title "A Middle Way Out of Vietnam," the noted historian and former special assistant to both President Kennedy and President Johnson, Arthur Schlesinger, Jr., gave a striking analysis of the course open to the United States to extricate itself from its difficult position in Vietnam. Professor Schlesinger points out:

The illusion that the war in South Vietnam can be decided in North Vietnam is evidently a result of listening too long to our own propaganda. Our Government has insisted so often that the war in Vietnam is a clear-cut case of aggression across frontiers that it has come to believe itself that the war was started in Hanoi and can be stopped there . . . Yet the best evidence is that the war began as an insurrection within South Vietnam which, as it has gathered momentum, has attracted increasing support and direction from the north. Even today the North Vietnamese regulars in South Vietnam amount to only a fraction of the total enemy force (and to an even smaller fraction of the American army in South Vietnam).

About U.S. attempts at reconstruction, Professor Schlesinger writes:

Much devotion and intelligence are at present going into the programs of reconstruction, but prospects are precarious so long as the enemy can slice through so much of South Vietnam with such apparent immunity; and so long as genuine programs of social reform threaten the vested interests of the Saigon Government and of large landholders.

Professor Schlesinger's assessment of the reconstruction program is underscored by a report appearing in the New York Times this morning from Saigon by Charles Mohr stating:

Top South Vietnamese officials have made varying assessments of the pacification or "revolutionary development" work done so far in 1966. The most optimistic was that performance was "not quite satisfactory," the bluntest that progress was "quite limited" and that "not much was achieved."

Commenting on administration statements that the real enemy in Vietnam is Red China, Professor Schlesinger warns:

The proposition that our real enemy in Vietnam is China is basic to the policy of widening the war. It is the vital element in the Administration case. Yet the proof our leaders have adduced for this proposition has been exceedingly sketchy and almost perfunctory. It has been proof by ideology and proof by analogy. It has not been proof by reasoned argument or by concrete illustration.

As for the middle course for the future, Professor Schlesinger advises:

I think a middle course is still possible if there were the will to pursue it. And this course must begin with a decision to stop widening and Americanizing the war—to limit our forces, actions, goals and rhetoric. Instead of bombing more places, sending in more troops, proclaiming ever more ardently that the fate of civilization will be settled in Vietnam, let us recover our cool and try to see the situation as it is: a horrid civil war in which Communist guerrillas, enthusiastically aided and now substantially directed from Hanoi, are trying to establish a Communist despotism in South Vietnam, not for the Chinese but for themselves. Let us understand that the ultimate problem here is not military but political. Let us adapt the means we employ to the end we seek.

In the same vein, speaking out against what he said was an idea fostered outside of Vietnam that the conflict there was a "kind of holy war between two powerful political ideologies," U Thant, Secretary General of the United Nations stated, as part of his annual report to the United Nations:

The Vietnamese people, in particular, have known no peace for a quarter of a century. Their present plight should be the first, and not the last, consideration of all concerned.

Indeed, I remain convinced that the basic problem in Vietnam is not one of ideology but one of national identity and survival. I see nothing but danger in the idea, so assiduously fostered outside Vietnam, that the conflict is a kind of holy war between two powerful political ideologies.

Also, over the weekend, the Vatican announced that Pope Paul VI would urge prayers on a worldwide basis during the month of October as part of a peace campaign to end the war in Vietnam. It is to be hoped that the prayers of the multitudes will include one for those in positions of leadership in the administration to face up to the facts not only as they are but as they were so that our future course of action can be determined in the light of reality rather than fantasy.

Last Saturday, September 17, 1966, another former adviser to both President Kennedy and President Johnson, Richard Goodwin, speaking before the national board of the Americans for Democratic Action here in Washington, also asked that the American people face up to realities with respect to U.S. involvement in Vietnam. With his knowledge of the inner workings of the White House, Mr. Goodwin called attention to the growing credibility gap between the administration and the American people. Speaking to this point he said:

The air is charged with rhetoric. We are buried in statements and speeches about negotiation and peace, the defense of freedom and the dangers of communism, the desire to protect the helpless and compassion for the dying. Much of it is important and sincere and well-meaning. Some is intended to deceive. Some is deliberate lie and distortion. But the important thing is not what we are saying, but what we are doing; not what is being discussed, but what is happening. . . . In this, as in so many aspects of the war, much of the information which feeds judgment is deeply obscured. Of course, in times of armed conflict facts are often elusive and much information, of necessity, cannot be revealed. By its nature war is hostile to truth. Yet with full allowance for necessary uncertainties I believe there has never been such intense and widespread deception and confusion as that which surrounds this war. The continual downpour of contradiction, mis-statements, and kaleidoscopically shifting attitudes has been so torrential that it has almost numbed the capacity to separate truth from conjecture or falsehood.

Calling for a return to the platform of the Democratic Party in 1964, "No wider war," Mr. Goodwin called for the formation of a "national committee against widening of the war." He said:

I suggest this organization work with other groups and individuals to form a national committee against widening of the war. It will not be aimed at withdrawal or even a lessening of the war in the South, although individuals who oppose escalation may also hold those views. Thus it will be open to all groups who oppose escalation in the North regardless of their position on other issues, and will be open to the millions of Americans who belong to no group but who share this basic belief and apprehension. Such a committee can provide a constant flow of objective information about Vietnam. It can keep vigil over official statements and ask the hard questions which might help separate wishful thinking from facts. It will neither be against the Administration nor for it, neither with any political party or opposed to it, neither liberal nor conservative. Its sole aim will be to mobilize and inform the American people in order to increase the invisible weight of what I believe to be the American majority in the deliberations and inner councils of government. Its purpose is to help the President and others in government by proving a counter pressure against those who urge a more militant course; a pressure for which those in government should be grateful since it will help them pursue the course of wise restraint.

As more and more of the truth is revealed about the reasons for the United States becoming mired in the morass in Vietnam, many more people will join their voices with those who have been speaking out for years against the steady escalation of the U.S. commitment in Vietnam and demand a halt to this senseless escalation of a war we should not be in.

I ask unanimous consent that there be printed at the conclusion of my remarks the article by Mr. Schlesinger referred to from New York Times magazine for September 18, 1966, the article by Mr. Mohr from the New York Times for September 19, 1966, excerpts from the report by Secretary General U. Thant, the article from the New York World Journal Tribune for September 18, 1966, describing the Pope's proposed action, and excerpts from the speech by Richard Goodwin on September 17, 1966, before the Americans for Democratic Action.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York (N.Y.) Times Magazine, Sept. 18, 1966]

SCHLESINGER SUGGESTS THAT WE RECOVER OUR COOL AND FOLLOW A MIDDLE WAY OUT OF VIETNAM

(By Arthur Schlesinger, Jr.)

Why we are in Vietnam is today a question of only historical interest. We are there, for better or for worse, and we must deal with the situation that exists. Our national security may not have compelled us to draw a line across Southeast Asia where we did, but, having drawn it, we cannot lightly abandon it. Our stake in South Vietnam may have been self-created, but it has nonetheless become real. Our precipitate withdrawal now would have ominous reverberations throughout Asia. Our commitment of over 300,000 American troops, young men of exceptional skill and gallantry engaged in cruel and difficult warfare, measures the magnitude of our national concern.

We have achieved this entanglement, not after due and deliberate consideration, but through a series of small decisions. It is not only idle but unfair to seek out guilty men. President Eisenhower, after rejecting American military intervention in 1954, set in motion the policy of support for Saigon which resulted, two Presidents later, in American military intervention in 1965. Each step in the deepening of the American commitment was reasonably regarded at the time as the last that would be necessary; yet, in retrospect, each step led only to the next, until we find ourselves entrapped today in that nightmare of American strategists, a land war in Asia—a war which no President, including President Johnson, desired or intended. The Vietnam story is a tragedy without villains. No thoughtful American can withhold sympathy as President Johnson ponders the gloomy choices which lie ahead.

Yet each President, as he makes his choices, must expect to be accountable for them. Everything in recent weeks—the actions of the Administration, the intimations of actions to come, even a certain harshness in the Presidential rhetoric—suggests that President Johnson has made his choice, and that his choice is the careful enlargement of the war. New experiments in escalation are first denied, then disowned, then discounted and finally undertaken. As past medicine fails, all we can apparently think to do is to increase the dose. In May the Secretary of the Air Force explained why were were not going to bomb Hanoi and Haiphong; at the end of June we began the strikes against the oil depots. The demilitarized zone between North and South Vietnam has been used by North Vietnam units for years, but suddently we have begun to bomb it.

When such steps work no miracle—and it is safe to predict that escalation will be no more decisive in the future than it has been in the past—the demand will arise for "just one more step." Plenty of room remains for widening the war: the harbors of North Vietnam, the irrigation dikes, the steel plants, the factories, the power grid, the crops, the civilian population, the Chinese border. The fact that we excluded such steps yesterday is, alas, no guarantee that we will not pursue them tomorrow. And if bombing will not bring Ho Chi Minh to his knees or stop his support of the Vietcong in South Vietnam, there is always the last resort of invasion. General Ky has already told us that we must invade North Vietnam to win the war. In his recent press conference, the Secretary of State twice declined to rule out this possibility.

The theory, of course, is that widening the war will shorten it. This theory appears to be based on three convictions: first, that the war will be decided in North Vietnam; second, that the risk of Chinese or Soviet entry is negligible, and third, that military "victory" in some sense is possible. Perhaps these premises are correct, and in another year or two we may all be saluting the wisdom and statesmanship of the American Government. In so inscrutable a situation, no one can be confident about his doubt and disagreement. Nonetheless, to many Americans these propositions constitute a terribly shaky basis for action which has already carried the United States into a ground war in Asia and which may well carry the world to the brink of the third world war.

The illusion that the war in South Vietnam can be decided in North Vietnam is evidently a result of listening too long to our own propaganda. Our Government has insisted so often that the war in Vietnam is a clear-cut case of aggression across frontiers that it has come to believe itself that the war was started in Hanoi and can be stopped there. "The war," the Secretary of State has solemnly assured us, "is clearly an 'armed attack,' cynically and systematically mounted by the Hanoi regime against the people of South Vietnam."

Yet the best evidence is that the war began as an insurrection within South Vietnam which, as it has gathered momentum, has attracted increasing support and direction from the north. Even today the North Vietnamese regulars in South Vietnam amount to only a fraction of the total enemy force (and to an even smaller fraction of the American army in South Vietnam). We could follow the genial prescription of General LeMay and bomb North Vietnam back to the Stone Age—and the war would still go on in South Vietnam. To reduce this war to the simplification of a wicked regime molesting its neighbors, and to suppose that it can be ended by punishing the wicked regime, is surely to misconceive not only the political but even the military character of the problem.

As for the assurances that China will not enter, these will be less than totally satisfying to those whose memory stretches back to the Korean War. General MacArthur, another one of those military experts on Orien-

tal psychology, when asked by President Truman on Wake Island in October, 1950, what the chances were of Chinese intervention, replied, "Very little. . . . Now that we have bases for our Air Force in Korea, if the Chinese tried to get down to Pyongyang, there would be the greatest slaughter." Such reasoning lay behind the decision (the Assistant Secretary of State for Far Eastern Affairs at that time is Secretary of State today) to send American troops across the 38th Parallel despite warnings from Peking that this would provoke a Chinese response. In a few weeks, China was actively in the war, and, while there was the greatest slaughter, it was not notably of the Chinese.

There seems little question that the Chinese have no great passion to enter the war in Vietnam. They do not want to put their nuclear plants in hazard; and, in any case, their foreign policy has typically been a compound of polemical ferocity and practical prudence. But the leaders in Peking are no doubt just as devoted students of Munich as the American Secretary of State. They are sure that we are out to bury them; they believe that appeasement invites further aggression; and, however deep their reluctance, at some point concern for national survival will make them fight.

When will that point be reached? Probably when they are confronted by a direct threat to their frontier, either through bombing or through an American decision to cross the 17th Parallel and invade North Vietnam. If a Communist regime barely established in Peking could take a decision to intervene against the only atomic power in the world in 1950, why does anyone suppose that a much stronger regime should flinch from that decision in 1966? Indeed, given the present discord in Peking, war may seem the best way to renew revolutionary discipline, stop the brawling and unite the nation.

It is true that the Chinese entry into the Korean War had at least the passive support of the Soviet Union; but it would be risky today to rely on the Sino-Soviet split to save us from everything, including Soviet aid to China in case of war with the United States or even direct Soviet entry into the war in Vietnam. For the Soviet Union is already extensively involved in Vietnam—more so in a sense than the Chinese—and it would be foolish to suppose that, given Moscow's competition with Peking for the leadership of the Communist world, Russia could afford to stand by and allow Communist North Vietnam or Communist China to be destroyed by the American imperialists.

As for the third premise (that military "victory" is in some sense possible): The Joint Chiefs of Staff, of course, by definition argue for military solutions. They are the most fervent apostles of "one more step." That is their business, and no one should be surprised that generals behave like generals. The fault lies not with those who give this advice but those who take it. Once, early in the Kennedy Administration, the then Chairman of the Joint Chiefs outlined the processes of escalation in Southeast Asia before the National Security Council, concluding, "If we are given the right to use nuclear weapons, we can guarantee victory." President Kennedy sat glumly rubbing an upper molar. After a moment someone said, "Mr. President, perhaps you would have the general explain to us what he means by victory." Kennedy grunted and dismissed the meeting. Later he said, "Since he couldn't think of any further escalation, he would have to promise us victory."

What is the purpose of bombing the north? It is hard to find out. According to Gen. Maxwell Taylor, "The objective of our air campaign is to change the will of the enemy leadership." Secretary McNamara, on the other hand, has said, "We never believed that bombing would destroy North Vietnam's will." Whatever the theory, the results would appear to support Secretary McNamara. The northern strategy instead of driving Hanoi to the conference table, seems to have hardened the will of the regime, convinced it that its life is at stake, brought it closer to China and solidified the people of North Vietnam in its support.

"There is no indication," General Westmoreland said the other day, "that the resolve of the leadership in Hanoi has been reduced." In other words, bombing has had precisely the effect that the analyses of the United States Strategic Bombing Survey after the Second World War would have forecast. Under Secretary of State George Ball was a director of that survey; this may well be why he has been reported so unenthusiastic about the air assault on the North.

And, far from stopping infiltration across the 17th Parallel, bombing, if our own statistics are to be believed, has stimulated it. "It is perfectly clear," Secretary McNamara has said, "that the North Vietnamese have continued to increase their support of the Vietcong despite the increase in our effort. . . . What has happened is that the North Vietnamese have continually increased the amount of resources, men and material that they have been willing to devote to their objective."

Nor can we easily match this infiltration by enlarging our own forces—from 300,000, for example, to 500,000 or 750,000. The ratio of superiority preferred by the Pentagon in guerrilla war is 10 to 1, which means that every time we send in 100,000 more men the enemy has only to send in 10,000 or so, and we are all even again. Reinforcement has not created a margin of American superiority; all it has done is to lift the stalemate to a higher and more explosive level. Indeed, there is reason to suppose that, in its own manner, the enemy can match our every step of escalation up to the point of nuclear war.

U.S. News & World Report says in its issue of Aug. 22: "It's clear now to military men: bombing will not win in Vietnam." This is a dispiriting item. Why had our military leaders not long ago freed themselves from the illusion of the omnipotence of air power, so cherished by civilians who think wars can be won on the cheap? The Korean war, as Gen. Matthew B. Ridgway has said, "taught that it is impossible to interdict the supply route of an Asian army by airpower alone. We had complete air mastery over North Korea, and we clobbered Chinese supply columns unmercifully. . . . But we did not halt their offensive nor materially diminish its strength." If air power was not decisive in Korea, where the warfare was conventional and the terrain relatively open and compact, how could anyone suppose that it would be decisive against guerrillas threading their way through the hills and jungles of Vietnam?

The bombing illusion applies, of course, to South as well as to North Vietnam. Tactical bombing—bombing in direct support of ground operations—has its place; but the notion that strategic bombing can stop guerrillas runs contrary to experience. And we had it last winter, on the authority of the Secretary of State, that despite the entry of North Vietnamese regulars the war in South Vietnam "continues to be basically a guerrilla operation."

Sir Robert Thompson, who planned the successful British effort against the Malayan guerrillas and later served as head of the British advisory mission in Saigon, has emphasized that the defending force must operate "in the same element" as their adversaries. Counterinsurgency, he writes, "is like trying to deal with a tomcat in an alley. It is no good inserting a large, fierce dog. The dog may not find the tomcat; if he does, the tomcat will escape up a tree; and the dog will then chase the female cats. The answer is to put in a fiercer tomcat."

Alas, we have no fiercer tomcat. The counterinsurgency effort in Vietnam has languished, while our bombers roam over that hapless country, dumping more tonnage of explosives each month than we were dropping per month on all Europe and Africa during the Second World War. Just the other day our bombs killed or injured more than 100 civilians in a hamlet in the Mekong Delta—all on the suspicion that two Vietcong platoons numbering perhaps 60 men, were there. Even if the Vietcong had still been around, which they weren't, would the military gain have outweighed the human and political loss? Charles Mohr writes in The Times: "Almost every provincial hospital in Vietnam is crowded with civilian victims of the war. Some American doctors and other officials in the field say the majority are the victims of American air power and South Vietnamese artillery."

The trouble is that we are fighting one war, with our B–52's and our naval guns and our napalm, and the Vietcong are fighting another, with their machine guns and ambushes and forays in the dark. "If we can get the Vietcong to stand up and fight, we will blast him," General Westmoreland has plaintively said; and when they occasionally rise to the surface and try to fight our kind of war, we do blast them. But the fact that they then slide back into the shadows does not mean that we are on the verge of some final military triumph. It means simply that we are driving them underground—where they renew themselves and where our large, fierce dog cannot follow.

Saigon officials have been reporting that Vietcong morale is declining as long as I can remember; these reports need not be taken seriously now. I know of no convincing evidence that the Vietcong lack the political and emotional commitment to keep fighting underground for another 20 years.

Our strategy in Vietnam is rather like trying to weed a garden with a bulldozer. We occasionally dig up some weeds, but we dig up most of the turf, too. The effect of our policy is to pulverize the political and institutional fabric which alone can give a South Vietnamese state that hope of independent survival which is our presumed war aim. Our method, in other words, defeats our goal. Indeed, the most likely beneficiary of the smashed social structure of South Vietnam will be Communism. "My feeling," Gen. Wallace Greene, commandant of the Marine Corps, has wisely said, "is that you could kill every Vietcong and North Vietnamese in South Vietnam and still lose the war. Unless we can make a success of the civic-action program, we are not going to obtain the objectives we have set."

Much devotion and intelligence are at present going into the programs of reconstruction, but prospects are precarious so long as the enemy can slice through so much of South Vietnam with such apparent immunity; and so long as genuine programs of social reform threaten the vested interests of the Saigon Government and of large landholders. In any case, as claimants on our resources, these programs of pacification are hopelessly outclassed by the programs of destruction. Surely, the United States, with all its ingenuity, could have figured out a better way to combat guerrilla warfare than the physical obliteration of the nation in which it is taking place. If this is our best idea of "protecting" a country against "wars of national liberation," what other country, seeing the devastation we have wrought in Vietnam, will wish American protection?

At the same time, our concentration on Vietnam is exacting a frightful cost in other areas of national concern. In domestic policy, with Vietnam gulping down a billion and a half dollars a month, everything is grinding to a stop. Lyndon Johnson was on his way to a place in history as a great President for his vision of a Great Society; but

the Great Society is now, except for token gestures, dead. The fight for equal opportunity for the Negro, the war against poverty, the struggle to save the cities, the improvement of our schools—all must be starved for the sake of Vietnam. And war brings ugly side-effects: inflation; frustration; angry protest; attack on dissenters on the ground that they cheer the enemy (an attack often mounted by men who led the dissent during the Korean war); premonitions of McCarthyism.

We also pay a cost abroad. Our allies naturally draw away as they see us heading down the road toward war with China. When we began to bomb the oil depots, James Reston wrote: "There is now not a single major nation in the world that supports Mr. Johnson's latest adventure in Hanoi and Haiphong." As nations seek to disengage themselves from the impending conflict, the quasi-neutralism of leaders like de Gaulle gains new plausibility.

On any realistic assessment, Western Europe and Latin America are far more significant to American security than South Asia; yet the Vietnam obsession has stultified our policy and weakened our position in both these vital areas. The war has clouded the hope, once mildly promising, of progress toward a détente with the Soviet Union. It has helped block agreements to end underground nuclear testing and to stop the spread of nuclear weapons. It has precipitated the decision of U Thant to resign as Secretary General of the United Nations and condemns the U.N. itself to a time of declining influence.

Our rejection of the views of our friends and allies—our conviction, as Paul H. Smith has put it, "that we alone are qualified to be judge, jury and executioner"—ignores Madison's solemn warning in the 63rd Federalist: "An attention to the judgment of other nations is important to every government for two reasons: the one is that independently of the merits of any particular plan or measure, it is desirable, on various accounts, that it should appear to other nations as the offspring of a wise and honorable policy; the second is that in doubtful cases, particularly where the national councils may be warped by some strong passion or momentary interest, the presumed or known opinion of the impartial world may be the best guide that can be followed. What has not America lost by her want of character with foreign nations; and how many errors and follies would she not have avoided, if the justice and propriety of her measures had, in every instance, been previously tried by the light in which they would probably appear to the unbiased part of mankind."

The Administration has called the critics of its Vietnam policy "neoisolationists." But surely the real neoisolationists are those who have isolated the United States from its allies and raised the tattered standard, last flourished 15 years ago by Douglas MacArthur, of "going it alone."

How have we managed to imprison ourselves in this series of dilemmas? One reason surely is that we have somehow lost our understanding of the uses of power. Understanding of power implies above all precision in its application. We have moved away from the subtle strategy of "flexible response" under which the level of American force was graduated to meet the level of enemy threat. The triumph of this discriminate employment of power was, of course, the Cuban missile crisis (where the Joint Chiefs, as usual, urged an air assault on the missile bases). But President Johnson, for all his formidable abilities, has shown no knack for discrimination in his use of power. His technique is to try and overwhelm his adversary—as in the Dominican Republic and Vietnam—by piling on all forms of power without regard to the nature of the threat.

Given this weakness for the indiscriminate use of power, it is easy to see why the application of force in Vietnam has been surrendered to the workings of what an acute observer of the Johnson foreign policy, Philip Geyelin, calls "the escalation machine." This machine is, in effect, the momentum in the decision-making system which keeps enlarging the war "for reasons only marginally related to military need."

The very size and weight of the American military presence generate unceasing pressures to satisfy military demands. These may be demands to try out new weapons; the London Sunday Telegraph recently ran an informative article comparing the Vietnam war to the Spanish Civil War as a military testing ground and laboratory. Or they may be cries for "one more step," springing in part from suppressed rage over the fact that, with military power sufficient to blow up the world, we still cannot compel guerrilla bands in black pajamas to submit to our will. Whatever the reason, Sir Robert Thompson has noted of the American theory of the war: "There was a constant tendency in Vietnam to mount large-scale operations, which had little purpose or prospect of success, merely to indicate that something aggressive was being done."

The administration has freely admitted that such operations, like the bombing of the North, are designed in part to prop up the morale of the Saigon Government. And the impression is growing now that they are also in part undertaken in order to smother doubts about the war in the United States and to reverse anti-Administration tendencies in the polls. Americans have become curiously insensitive to the use of military operations for domestic political purposes. A quarter-century ago President Roosevelt postponed the North African invasion so that it would not take place before the midterm elections of 1942; but today observers in Washington, without evidence of shock, predict a new venture in escalation before the midterm elections of 1966.

The triumph of the escalation machine has been assisted by the faultiness of the information on which our decisions are based. Nothing is phonier than the spurious exactitude of our statistics about the Vietnam war. No doubt a computerized military establishment demands numbers; but the "body count" of dead Vietcong, for example, includes heaven knows how many innocent bystanders and could hardly be more unreliable. The figures on enemy strength are totally baffling, at least to the ordinary citizen relying on the daily newspaper. The Times on Aug. 10 described "the latest intelligence reports" in Saigon as saying that the number of enemy troops in South Vietnam had increased 52,000 since Jan. 1 to a total of 282,000. Yet, "according to official figures," the enemy had suffered 31,571 killed in action in this period, and the infiltration estimate ranged from 35,000 as "definite" to 54,000 as "possible."

The only way to reconcile these figures is to conclude that the Vietcong have picked up from 30,000 to 50,000 local recruits in this period. Since this seems unlikely—especially in view of our confidence in the decline of Vietcong morale—a safer guess is to question the wonderful precision of the statistics. Even the rather vital problem of how many North Vietnamese troops are in South Vietnam is swathed in mystery. The Times reported on Aug. 7: "About 40,000 North Vietnamese troops are believed by allied intelligence to be in the South." According to an Associated Press dispatch from Saigon printed in The Christian Science Monitor of Aug. 15: "The South Vietnamese Government says 102,500 North Vietnamese combat troops and support battalions have infiltrated into South Vietnam.

"These figures are far in excess of United States intelligence estimates, which put the maximum number of North Vietnamese in the South at about 54,000."

But General Westmoreland told his Texas press conference on Aug. 14 that the enemy force included "about 110,000 main-force North Vietnamese regular army troops." Perhaps these statements are all reconcilable, but an apparent discrepancy of this magnitude on a question of such importance raise a twinge of doubt.

Nor is our ignorance confined to battle-order statistics. We have always lacked genuine knowledge of and insight into the political and cultural problems of Vietnam, and the more we press all problems into a military framework the worse off we are. The Administration in Washington was systematically misinformed by senior American officials in Saigon in 1962–63 regarding the progress of the war, the popularity of Diem, the effectiveness of the "strategic hamlet" program and other vital matters. It was not that these officials were deliberately deceiving their President; it was that they had deceived themselves first. Ordinary citizens restricted to reading the American press were better informed in 1963 than officials who took top-secret cables seriously.

The fact is that our Government just doesn't know a lot of things it pretends to know. It is not discreditable that it should not know them, for the facts are elusive and the judgments incredibly difficult. But it is surely inexcusable that it should pretend to know things it does not—and that it should pass its own ignorance on to the American people as certitude. And it is even less excusable that it should commit the nation to a policy involving the greatest dangers on a foundation so vague and precarious.

So now we are set on the course of widening the war—even at the cost of multiplying American casualties in Vietnam and deepening American troubles at home and abroad; even at the risk of miring our nation in a hopeless and endless conflict on the mainland of Asia beyond the effective employment of our national power and beyond the range of our primary interests; even at the risk of nuclear war.

Why does the Administration feel that these costs must be paid and these risks run? Hovering behind our policy is a larger idea—the idea that the war in Vietnam is not just a local conflict between Vietnamese but a fateful test of wills between China and the United States.

Our political and rhetorical escalation of the war has been almost as perilous as our military escalation. President Kennedy's effort was to pull Laos out of the context of great-power conflict and reduce the Laotian civil war to rational proportions. As he told Khrushchev at Vienna in 1961, Laos was just not important enough to entangle two great nations. President Johnson, on the other hand, has systematically inflated the significance of the war in Vietnam. "We have tried to make it clear over and over again," as the Secretary of State has put it, "that although Hanoi is the prime actor in this situation, that it is the policy of Peking that has greatly stimulated Hanoi. . . . It is Ho Chi Minh's war. Maybe it is Mao Tse-tung's war."

"In the forties and fifties," President Johnson has said, "we took our stand in Europe to protect the freedom of those threatened by aggression. Now the center of attention has shifted to another part of the world where aggression is on the march. Our stand must be as firm as ever." Given this view, it is presumably necessary to pay the greatest costs and run the greatest risks—or else invite the greatest defeat.

Given this view, too, there is no reason not to Americanize the war. President Kennedy did not believe that the war in Vietnam could succeed as a war of white men

against Asians. It could not be won, he said a few weeks before his death, "unless the people [of South Vietnam] support the effort. . . . We can help them, we can give them equipment, we can send our men out there as advisers, but they have to win it, the people of Vietnam." We have now junked this doctrine. Instead, we have enlarged our military presence until it is the only thing that matters in South Vietnam, and we plan now to make it still larger; we have summoned the Saigon leaders, like tribal chieftians on a retainer, to a conference in an American state; we crowd the streets of Saigon with American generals (58 at last count) and visiting stateside dignitaries. In short, we have seized every opportunity to make clear to the world that this is an *American* war—and, in doing this, we have surely gone far to make the war unwinnable.

The proposition that our real enemy in Vietnam is China is basic to the policy of widening the war. It is the vital element in the Administration case. Yet the proof our leaders have adduced for this proposition has been exceedingly sketchy and almost perfunctory. It has been proof by ideology and proof by analogy. It has not been proof by reasoned argument or by concrete illustration.

The proof by ideology has relied on the syllogism that the Vietcong, North Vietnam and China are all Communist states and *therefore* must be part of the same conspiracy, and that, since the Vietcong are the weakest of the three, they must *therefore* be the spearhead of a coordinated Chinese plan of expansion. The Department of State, in spite of what has struck most people as a rather evident fragmentation of the Communist world, has hated to abandon the cozy old clichés about a centralized Communist conspiracy aimed at monolithic world revolution.

As late as May 9, 1965, after half a dozen years of public Russo-Chinese quarreling, Thomas C. Mann, then No. 3 man in the department, could talk about "instruments of Sino-Soviet power" and "orders from the Sino-Soviet military bloc." As late as Jan. 28, 1966, the Secretary of State could still run on about "their world revolution," and again, on Feb. 18, about "the Communists" and their "larger design." While the department may have accepted the reality of the Russo-Chinese schism by September, 1966, the predominant tone is still to regard Asian Communism as a homogeneous system of aggression. The premise of our policy has been that the Vietcong equal Hanoi and Hanoi equals Peking.

Obviously, the Vietcong, Hanoi and Peking have interests in common and strong ideological affinities. Obviously, Peking would rejoice in a Hanoi-Vietcong victory. But they also have divergent interests and purposes—and the divergencies may prove in the end to be stronger than the affinities. Recent developments in North Korea are instructive. If any country was bound to Peking ties of gratitude, it was North Korea, which was preserved as an independent state by Chinese intervention 15 years ago. If any country today is at the mercy of Peking, it is again North Korea. When North Korea now declares in vigorous language its independence of China, does anyone suppose that North Vietnam, imbued with historic mistrust of China and led by that veteran Russian agent Ho Chi Minh, would have been more slavish in its attitude toward Peking?

The other part of the Administration case has been proof by analogy, especially the good old Munich analogy. "I'm not the village idiot," the Secretary of State recently confided to Stewart Alsop. "I know Hitler was an Austrian and Mao is a Chinese. . . . But what is common between the two situations is the phenomenon of aggression." The Vietnam war, President Johnson recently told the American Legion, "is meant to be the opening salvo in a series of bombardments or, as they are called in Peking, 'wars of liberation.'" If this technique works this week in Vietnam, the Administration suggests, it will be tried next week in Uganda and Peru. But, if it is defeated in Vietnam, the Chinese will known that we will not let it succeed elsewhere.

"What happens in South Vietnam," the President cried at Omaha, "will determine—yes, it will determine—whether ambitious and aggressive nations can use guerrilla warfare to conquer their weaker neighbors." The Secretary of State even discribed an exhortation made last year by the Chinese Defense Minister, Marshal Lin Piao, as a blueprint for world conquest comparable to Hitler's "Mein Kampf."

One thing is sure about the Vietnam riddle: it will not be solved by bad historical analogies. It seems a trifle forced, for example, to equate a civil war in what was for hundreds of years the entity of Vietnam (Marshal Ky, after all, is a North Vietnamese himself) with Hitler's invasion of Austria and Czechoslovakia across old and well-established line of national division; even the village idiot might grasp the difference.

When President Eisenhower invoked the Munich analogy in 1954 in an effort to involve the British in Indochina, Prime Minister Churchill, a pretty close student of Munich in his day, was unmoved. The Chinese have neither the overwhelmingly military power nor the timetable of aggression nor, apparently, the pent-up mania for instant expansion which would justify the Hitler parallel. As for the Lin Piao document, the Rand Corporation, which evidently read it with more care than the State Department bothered to do, concluded that, far from being Mao's "Mein Kampf," it was a message to the Vietcong that they could win "only if they rely primarily on their own resources and their own revolutionary spirit," and that it revealed "the lack, rather than the extent, of Peking's past and present control over Hanoi's actions."

In any case, guerrilla warfare is not a tactic to be mechanically applied by central headquarters to faraway countries. More than any other form of warfare, it is dependent on conditions and opportunities within the countries themselves. Whether there are wars of national liberation in Uganda and Peru will depend, not on what happens in Vietnam, but on what happens in Uganda and Peru.

One can agree that the containment of China will be major problem for the next generation. But this does not mean that we must re-enact in Asia in the sixties the exact drama of Europe in the forties and fifties. The record thus far suggests that the force most likely to contain Chinese expansionism in Asia (and Africa, too) will be not Western intervention but local nationalism. Sometimes local nationalism may call on Western support—but not always. Countries like Burma and Cambodia preserve their autonomy without American assistance. The Africans have dealt with the Chinese on their own. The two heaviest blows recently suffered by Peking—the destruction of the Communist party in Indonesia and the declaration of independence by North Korea—took place without benefit of American patronage or rhetoric.

In the unpredictable decades ahead, the most effective bulwark against "international" Communism in some circumstances may well be national Communism. A rational policy of containing China could have recognized that a Communist Vietnam under Ho might be a better instrument of containment than a shaky Saigon regime led by right-wing mandarins or air force generals. Had Ho taken over all Vietnam in 1954, he might today be enlisting Soviet support to strengthen his resistance to Chinese pressure—and this situation, however appalling for the people of South Vietnam, would obviously be better for the United States than the one in which we are floundering today. And now, alas, it may be almost too late: the whole thrust of United States policy since 1954, and more than ever since the bombing of the North began, has been not to pry Peking and Hanoi apart but to drive them together.

Is there no way out? Are the only alternatives widening the war or disorderly and humiliating withdrawal? Surely, our statesmanship is not yet this bankrupt. I think a middle course is still possible if there were the will to pursue it. And this course must begin with a decision to stop widening and Americanizing the war—to limit our forces, actions, goals and rhetoric. Instead of bombing more places, sending in more troops, proclaiming ever more ardently that the fate of civilization will be settled in Vietnam, let us recover our cool and try to see the situation as it is: a horrid civil war in which Communist guerrillas, enthusiastically aided and now substantially directed from Hanoi, are trying to establish a Communist despotism in South Vietnam, not for the Chinese but for themselves. Let us understand that the ultimate problem here is not military but political. Let us adapt the means we employ to the end we seek.

Obviously, military action plays an indispensable role in the search for a political solution. Hanoi and the Vietcong will not negotiate so long as they think they can win. Since stalemate is a self-evident precondition to negotiation, we must have enough American armed force in South Vietnam to leave no doubt in the minds of our adversaries that they cannot hope for victory. They must also have no illusion about the prospect of an American withdrawal. The object of the serious opposition to the Johnson policy is to bring about not an American defeat but a negotiated settlement.

Therefore, holding the line in South Vietnam is essential. Surely, we already have enough American troops, firepower and installations in South Vietnam to make it clear that we cannot be beaten unless we choose to scuttle and run, which will not happen. The opponents of this strategy talk as if a holding action would put our forces under siege and relinquish all initiative to the enemy. This need not, of course, be so. It is possible to slow down a war without standing still; and, if our present generals can't figure out how to do this, then let us get generals who can. Generals Ridgway and Gavin could doubtless suggest some names. Moreover, there is a South Vietnamese army of some 600,000 men which can take all the initiative it wants. And if we are told that the South Vietnamese are unwilling or unable to fight the Vietcong, then we must wonder all the more about the political side of the war.

The object of our military policy, as observers like Henry Kissinger and James MacGregor Burns have proposed, should be the creation and stabilization of secure areas where the South Vietnamese might themselves undertake social and institutional development. Our resources should go, in the Vietnam jargon, more to clear-and-hold than to search-and-destroy (especially when search-and-destroy more often means search-and-drive-underground). We should get rid of those "one-star generals who," in the words of Sir Robert Thompson, "regard their tour in Vietnam as an opportunity to indulge in a year's big-game shooting from their helicopter howdahs at Government expense."

At the same time we should induce the Saigon Government to institute generous amnesty provisions of the kind which worked so well in the Philippines. And we should further increase the incentive to come over

by persuading the South Vietnamese to abandon the torture of prisoners—a practice not only horrible in itself but superbly calculated to make the enemy fight to the bitter end. In the meantime we must end our own shameful collaboration with this barbarism and stop turning Vietcong prisoners over to the South Vietnamese when we know that torture is probable.

As for bombing the North, let us taper this off as prudently as we can. Bombing is not likely to deter Hanoi any more in the future than it has in the past; and, given its limited military effect, the Administration's desire to gratify the Saigon Government and the American voter is surely not important enough to justify the risks of indefinite escalation. Moreover, so long as the bombing continues there is no chance of serious negotiation. Nor does the failure of the 37-day pause of last winter to produce a settlement refute this. Thirty-seven days were hardly enough to persuade our allies that we honestly wanted negotiation; so brief an interlude left no time for them to move on to the tricky job of persuading Hanoi. For Hanoi has substantial reasons for mistrusting negotiation—quite apart from Chinese pressure or its own hopes of victory. Ho has entered into negotiation with the West twice in the past—in 1946–47 and again in 1954—and each time, in his view, he lost at the conference table things he thought he had won on the battlefield.

For all our official talk about our readiness to go anywhere, talk to anyone, etc., it cannot be said that the Administration has pursued negotiation with a fraction of the zeal, imagination and perseverance with which it has pursued war. Indeed, some American scholars who have studied the matter believe that on a number of occasions when pressure for negotiation was mounting we have, for whatever reason, stepped up the war.

Nor can it be said that the Administration has laid fairly before the American people the occasional signals, however faint, which have come from Hanoi—as in the early winter of 1965, when U Thant's mediation reached the point of selecting the hotel in Rangoon where the talks might take place, until we killed the idea by beginning the bombing of the North. Nor, for all our declarations about "unconditional" negotiations, have we refrained from setting conditions—such as, for example, that we won't talk to the Vietcong unless they come to the conference table disguised as North Vietnamese. Though the Vietcong constitute the great bulk of the enemy force, they have been given little reason to think we will negotiate about anything except their unconditional surrender.

It is hard to see why we should not follow the precedent of Laos, when we admited the Pathet Lao to the peace talks, and offer the Vietcong the prospect of a say in the future political life of South Vietnam—conditioned on their laying down their arms, opening up their territories and abiding by the ground rules of free elections. Nor is there reason to see why we have been so reluctant again to follow the Laos model and declare neutralization, under international guarantee, our long-run objective for Vietnam. An imaginative diplomacy would long since have discussed the ways and means of such neutralization with Russia, France, Britain and other interested countries. Unsatisfactory as the situation in Laos may be today, it is still incomparably better than the situation in South Vietnam.

On the other hand, negotiation is not an exclusive, or even primary, American responsibility. Along with a military stalemate, the other precondition of a diplomatic settlement is surely a civilian government in Saigon. Marshal Ky is one of those Frankenstein's monsters we delight in creating in our "client" countries, very much like the egregious General Phoumi Nosavan, who single-handedly blocked a settlement in Laos for two years. Like Phoumi, Ky evidently feels that Washington has committed itself irrevocably to him—and why should he not after the laying on of hands at Honolulu?—and that, whatever he does, we cannot afford to abandon him.

Robert Shaplen, in the August 20 issue of The New Yorker, reported from Saigon that the atmosphere there "is being compared to the miasma that surrounded Diem and his tyrannical brother Ngo Dinh Nhu" and that "many Vietnamese believe that the Americans, having embraced Ky so wholeheartedly and supported him so long, are just as responsible as his Government for the recent repressive acts."

I am sure that President Johnson did not intend to turn over American policy and honor in Vietnam to Marshal Ky's gimcrack, bullyboy, get-rich-quick regime. The time is bound to come when Ky must learn the facts of life, as General Phoumi eventually and painfully learned them.

But why wait? In our whole time in Vietnam, there has never been a Government in Saigon which had the active loyalty of the countryside. It might be an agreeable experiment to encourage one to come into existence. Instead of identifying American interests with Ky and rebuffing the broader political impulses in South Vietnam, we should long since have welcomed a movement toward a civilian regime representing the significant political forces of the country and capable both of rallying the army and carrying forward programs of social reform. We should give such a Government all possible assistance in rebuilding and modernizing the political and institutional structures of South Vietnam. And if it should favor the neutralization of its country, if it should seek negotiation with the Vietcong, even if it should release us from our commitment to stay in Vietnam, we should not think that the world is coming to an end.

It is not too late to begin the de-escalation of the war; nor would the reduction of our military effort damage our international influence. "There is more respect to be won in the opinion of this world," George Kennan has written, "by a resolute and courageous liquidation of unsound positions than by the most stubborn pursuit of extravagant or unpromising objectives." France was stronger than ever after de Gaulle left Algeria, the Soviet Union suffered no lasting damage from pulling its nuclear missiles out of Cuba. And the policy of de-escalation recommended here is, of course, something a good deal less than withdrawal.

De-escalation *could* work, *if* there were the will to pursue it . . . This is the hard question. The Administration, disposed to the indiscriminate use of power, enmeshed in the grinding cogs of the escalation machine, committed to the thesis that China is the enemy in Vietnam, obviously could not turn to de-escalation without considerable inner upheaval. The issue in the United States in the months to come will be whether President Johnson's leadership is sufficiently resilient and forbearing to permit a change in the direction of policy and arrest what is coming increasingly to seem an accelerating drift toward a great and unnecessary catastrophe.

[From the New York (N.Y) Times, Sept. 19, 1966]

SAIGON TO REFORM RURAL EFFORTS; MARINES BREAK TRAP AT DONGH—PACIFICATION ASSESSED

(By Charles Mohr)

SAIGON, SOUTH VIETNAM, September 18.—South Vietnamese officials have concluded that there have been serious deficiencies in the rural pacification program this year and that reforms are needed in 1967, highly reliable sources disclosed today.

Top South Vietnamese officials have made varying assessments of the pacification or "revolutionary development" work done so far in 1966. The most optimistic was that performance was "not quite satisfactory," the bluntest that progress was "quite limited" and that "not much was achieved."

In general, the South Vietnamese analyses were more critical and pessimistic than those by United States officials. The Vietnamese studies were not meant for publication but for policy planning.

Veteran observers in Vietnam found the South Vietnamese official pessimism a cause for optimism. Their reasoning was that shortcomings can be overcome only when they are honestly acknowledged.

TEAMS IMPLEMENT PROGRAM

Under the rural pacification program, trained teams of workers move into selected rural areas and attempt to bring them firmly under Government control by rooting out the Vietcong apparatus and improving life in the area, as well as through political propaganda.

Although there is a temptation to try, it is impossible to measure the program's progress statistically. The evaluation by the Vietnamese officials shows why.

They concluded, the reliable sources said, that more progress had been made this year than ever before. But in many areas the following faults were discovered:

Pacification planning at the start of the year by provincial officials was "unrealistic." Some teams were shifted from difficult and hostile areas to easy ones to make "better performance scores."

Statistics were unreliable because pacification operations were in some cases "carried out over again many times at the same number of hamlets" that had once been officially declared as pacified.

Physical security was not as good as expected and Vietcong underground agents continued in some cases to collect taxes and carry out propaganda activities.

The quality of pacification workers or "cadres," as they are called, was below expectations. Recruiting met requirements "in quantity but not in quality."

In some cases, team members were "not very enthusiatic toward their work" or toward the people's aspirations. The teams generally stayed in their assigned areas for too short a time and in some cases left and declared them pacified before such judgment was realistic.

NUMERICAL REPORT CITED

Those conclusions cast some doubt on the assertion made in a Washington report this week by Robert W. Komer, a special Presidential assistant assigned to the pacification program, that in the first six months of the year 531 hamlets containing 580,000 people had been brought into the pacification program.

The South Vietnamese Government, in planning for 1967, is stressing genuine pacification of hamlets now only "statistically" pacified.

This year each of the 59-man rural pacification teams was supposed to spend a minimum of two to three months in pacifying a hamlet. But in practice, that often was the maximum.

Under a new "rhythm" of pacification planned for 1967, each team is expected to work on no more than two or three hamlets in a year and may spend an entire year in one difficult hamlet.

Each team will be required to leave behind a small number of men to maintain stability. Thus, by 1968 each team will continue to support about two hamlets while undertaking the pacification of two more.

Emphasis will be on well-populated hamlets, on those especially susceptible to economic and agricultural development and those with strategic positions and reasonably good military security.

The new guidelines may lead to more solid achievements but will undoubtedly slow down—at least on paper—the already slow process of pacifying all of South Vietnam's 15,000 hamlets.

Few tasks in public administration anywhere in the world are so complex and difficult as those assigned to the 59-man pacification teams in Vietnam. And, in some cases, they have received poor support from other units and agencies.

The South Vietnamese army, is said to resent the teams as "unmilitary" and has sometimes withdrawn troops without warning, leaving teams exposed to attack by the Vietcong. Teams were sometimes expropriated by provincial officials who used them as regular troops or in guard assignments, leaving their hamlets unshielded.

EXCERPTS FROM "INTRODUCTION TO THE ANNUAL REPORT"

(By Secretary General U Thant of the United Nations, Sept. 15, 1966)

X. CONCLUDING OBSERVATIONS

This review of the most important developments within the United Nations during the last twelve months has the usual contrasts of light and shadow. The continued slow rate of progress in many of our fields of endeavor, and the setbacks which have been suffered in others, can only be a cause of disappointment to the peoples of the world in whose name the Charter of the United Nations was written. For this, however, they must not blame the Charter itself nor the institutions which it created.

The weaknesses and shortcomings of the United Nations lie not in its constitutional purposes, objectives and procedures but in world conditions at the present juncture of history. The proceedings of the Organization inevitably mirror the state of the relationships between different peoples and different nations and sometimes between the rulers and the ruled; the economic circumstances under which they live; the social conditions that surround them. It is in these realms, and not in the structure(s) of the United Nations, that the roots of the troubles of the world lie.

The troubles arising from present conditions are abundant. They are the prevalence of narrow nationalisms, the periodic reliance on crude power—whether political, military or economic—to serve or protect supposed national interests, the appalling rise in the quantity and destructive potential of nuclear armaments, the ever more serious gaps in economic development, the persistence of colonial domination over several million people, the continuing prevalence in many parts of the world of racial discrimination and suppression of human rights, and, among populations constantly increasing, the widespread inadequacies of education, food shortages verging on famine, and lack of medical care. These excesses, inequities and injustices—and the fears, tensions, frustrations, jealousies and aggressions which they breed among peoples and among nations—still too largely condition the state of the world, still too strongly and adversely influence the national policies which Member States bring to bear on the work of the United Nations, and still too seriously obstruct rather than challenge the capacity of the Organization to fulfill its purposes.

In the present difficult state of international affairs, I believe it to be the first duty of the membership to face up to the fact that the chances of fruitful international co-operation on many crucial issues in which the United Nations has a clear responsibility for decision and action—issues ranging from disarmament to development—have been steadily and seriously impaired over the past two years by a situation over which, for well-known reasons, the United Nations has not been able to exercise any effective control. This situation, of course, is the deepening crisis over Viet-Nam, where the dangerous escalation of armed force has been accompanied, in my view, by an increasing intransigence and distrust among Governments and peoples.

For my own part, I have tried by best to help in the efforts which have been made to reduce the escalation of the conflict in Viet-Nam and to move to the conference table the quest for a solution of the problem. In doing so, I have been increasingly distressed to observe that discussions of the matter have by and large been dominated by consideration and analysis of the power politics involved, and that there has been much less concern for the tremendous human suffering which the conflict has entailed for the people of Viet-Nam and also for the people of other countries involved in the fighting. My heart goes out to them. The Viet-Namese people, in particular, have known no peace for a quarter of a century. Their present plight should be the first, and not the last, consideration of all concerned. Indeed, I remain convinced that the basic problem in Viet-Nam is not one of ideology but one of national identity and survival. I see nothing but danger in the idea, so assidiously fostered outside Viet-Nam, that the conflict is a kind of holy war between two powerful political ideologies.

The survival of the people of Viet-Nam must be seen as the real issue, and it can be resolved not by force but by patience and understanding, in the framework of a willingness to live and let live. If this approach can be accepted on all sides—and the moral influence of Governments and peoples outside the immediate conflict can help to bring this about—I believe it should be possible to reach a settlement which would end the suffering in Viet-Nam, satisfy the conscience of the world at large and remove a formidable barrier to international co-operation.

Although Viet-Nam represents the most serious manifestation of the unsatisfactory state of international affairs, it is not the only point of open danger. The situation in the Middle East has shown no improvement, and dangerous tensions persist. I sincerely trust that the hopes newly raised for a settlement in Yemen will be fulfilled. I also hope that the involvement of the United Nations in the difficult question of Aden may help to bring about a peaceful solution there. Beyond these questions lies the long-standing conflict between Israel and the Arab States and the continuing need for passions to be restrained and the terms of the armistice agreements to be observed by all concerned.

I shall not conceal my distress at some of the happenings in Africa during the last twelve months—not only those which have hardened the colonial and quasi-colonial attitudes still entrenched in large parts of the continent, but also those involving sudden and violent political changes in newly independent States. They have created a sense of instability whch can easily be misrepresented or exaggerated to the disadvantage of Africa as a whole and, by causing an increase in tensions among African countries, they have produced a setback to African unity. By no means all of the many problems that the African peoples are facing are of their own making, but few, if any, of them can be solved except by the African countries themselves showing the qualities of maturity and restraint which they have often displayed, and using these qualities to endanger the greater spirit of co-operation and willingness to work together, which is essential to the fulfilment of Africa's destiny. This task is so important that Governments and peoples must put above everything else a willingness to sink their differences in the higher interests of Africa and of the world as a whole.

The situation in Latin America also gives cause for some concern. Notwithstanding the several factors which should enable Latin America to move forward in its economic and social development, the area as a whole is finding it very hard to consolidate satisfactory growth rates. Many of the difficulties encountered are home-made and must be eliminated by the Latin American countries themselves, while others stem from Latin America's economic relations with the rest of the world and their solution must be sought in an effective and continuous policy of international understanding and co-operation.

At the same time, I must make clear my belief that, while we face up to the existence of national and even international situations which are beyond the control of the United Nations and recognize the harmful effects which they may have on the progress of international co-operation within its sphere of activity, the United Nations should be enabled to act more effectively and decisively than it has done so far on many of the matters before it. We cannot wait for the world to right itself—for the great Powers, in particular, to adjust their differences—before applying greater determination and, if necessary, a larger sacrifice of time-honoured attitudes to the solution of urgent problems.

It has, of course, been partly because of the deterioration in the international situation that it has not been possible to make greater progress in regard to such basic issues as disarmament. The world disarmament conference still remains a somewhat distant goal. The problem of non-proliferation of nuclear weapons has gained added urgency and there is a greatly increased need for early action on account of the terrible prospect of more countries joining the "nuclear club". It is also, in my view, both necessary and feasible to agree upon a ban of all nuclear tests. I hope that the discussions at the forthcoming session of the General Assembly will demonstrate, above all to the nuclear Powers themselves, how essential it is to make speedy progress in regard to these matters.

Moreover, the international situations to which I have referred, the rise of tensions and the emergence of new dangers in so many parts of the world, point to the need for a stronger rather than a weaker United Nations, and one which can be relied upon to undertake peace-keeping operations wherever such action could help in the restoration of stable conditions. Unfortunately, although there seems to be a measure of agreement that these operations have been effective in the past and could prove useful in the future, we are still far from agreement on basic principles. I very much hope that, in the months to come, the general membership and in particular those Members who have a special responsibility with regard to the maintenance of international peace and security, may find it possible, within the Charter, to agree upon the procedures to be followed in launching such operations, the responsibility of the various organs in their actual conduct, and the financial arrangements by which the expenditures involved may be met. I must draw attention to the fact that the peace-keeping activities of the United Nations, perhaps more than any other part of its work, have enabled the Organization to gain a measure of public confidence which is in danger of being lost if the Member States remain deadlocked on the constitutional and financial questions involved.

I should like to add, in this connexion, that I believe that regional organizations

will have an important role to play in future in reducing tensions within their regions and in promoting co-operative efforts to attain common ends. The work of the United Nations at the regional level in the economic and social fields has won universal acclaim; the original economic commissions have become increasingly effective in helping the developing countries not merely through research and studies but also by direct operational activities including those which have led to the establishment of economic and social planning institutes and development banks. The work of inter-governmental regional bodies outside the United Nations can also, I am sure, contribute to the solution of problems between countries within a region. However, there are certain questions of jurisdiction and competence which arise with regard to the maintenance of international peace and security, especially in the peacekeeping field, and concerning which the role of the regional organizations requires clearer definition. Some time ago, I suggested that a study of the functioning of regional organizations in terms of their respective charters might be useful, and I mention it again in the belief that Governments should wish to follow it up.

It is as important for a stronger United Nations to continue the long-term task of building the peace as it is to equip itself for helping countries to keep the peace. It is not enough, in my opinion, for the United Nations to deal where it can, and as the case arises, with each specific problem that threatens world peace. The causes of tension in the world have to be attacked at all of their many roots. We have the means of doing so, and we have made a start. While for example, the international activities in the fields of economic and social development and human rights do not figure in the headlines, the fact is that the greater part of the resources of the United Nations and its family of agencies is devoted to these tasks. The manner in which they are undertaken has a direct relationship to the reduction of tensions. I have said many times that it is essential that the gulf between the rich and the poor countries should be narrowed. I attach the greatest importance to the Governments of Member States taking seriously the goals of the United Nations Development Decade, and making deliberate progress towards the achievement of these goals.

There are other causes of tension which cannot be left to resolve themselves. In particular, I feel that the United Nations must make a sustained attack on the problems which we might, because of their origin or their nature, describe as the problems of colonialism. While recognizing that substantial progress has been made, we cannot afford to forget that the process of decolonization has not been completed. A hard core of actual colonialism still exists, particularly in Africa. It is coupled with the kindred problem of racial discrimination, and this evil in turn subjects the majority of the population of one of the largest independent States in Africa to conditions akin to the worst type of colonial subjection. I believe that in these situations there lies a great opportunity for statesmanship on the part of the colonial Powers—an opportunity which they must seize before it is too late.

It is impossible, moreover, to view some of these outstanding problems—whether it is the position of the United Nations in regard to the crisis in South-East Asia or the lack of progress in disarmament—without relating them to the fact that the United Nations has not yet attained the goal of universality of membership. In the long run the Organization cannot be expected to function to full effect if one fourth of the human race is not allowed to participate in its deliberations. I know that there are serious political difficulties involved in correcting this situation; but I hope that the long-term advantages may be more clearly seen and the necessary adjustments made.

This process may take some further time. Meanwhile, I feel that all countries should be encouraged and enabled, if they wish to do so, to follow the work of the Organization more closely. It could only be of benefit to them and to the United Nations as a whole to enable them to maintain observers at Headquarters, at the United Nations Office at Geneva and in the regional economic commissions, and to expose them to the impact of the work of the Organization and to the currents and cross-currents of opinion that prevail within it, as well as to give them some opportunity to contribute to that exchange. Such contacts and inter-communication would surely lead to a better understanding of the problems of the world and a more realistic approach to their solution. In this matter I have felt myself obliged to follow the established tradition by which only certain governments have been enabled to maintain observers. I commend this question for further examination by the General Assembly so that the Secretary-General may be given a clear directive as to the policy to be followed in the future in the light, I would hope, of these observations.

The United Nations is an experiment in multilateral international diplomacy. Governments maintain here Permanent Representatives who have to carry out instructions understandably designed to promote the political and other interests of the Governments concerned. At the same time, however, these Governments have subscribed to the principles and ideals of the Charter and they have to recognize that one of its basic purposes is to be "a centre for harmonizing the actions of nations" in the attainment of the common ends for which the United Nations was established. I am glad that in most cases the representatives of Member States do not, in their pursuit of national interests, forget the larger interests of humanity represented by this Organization. I personally believe that it should be possible for the Governments of Member States in all cases to use the United Nations as a centre for harmonizing their actions so that the interests of humanity may not suffer but may be properly served.

In these observations I have stressed some of the basic beliefs which I have held in the discharge of my functions as Secretary-General over the last fifty-eight months. I feel that this is an appropriate occasion for me to urge that the problems to which I have referred and the suggestions which I have made deserve careful consideration if the Organization is to be strengthened, if peace is to be preserved and promoted, and if we are to make real progress towards the goal of the economic and social advancement of all peoples. There are many ways of reaching these objectives of peace and well-being, and I do not believe that anyone should adopt a dogmatic approach to them. Conditions differ widely from country to country and each has the right, within the broad framework of the principles of the United Nations, to pursue its goals in its own way and by means which it judges most appropriate and fruitful. At the same time I believe that the ideological differences that have divided the world are beginning to show signs of losing their sharp edge, and I approach the end of my term of office with some confidence that, over the years, the United Nations will prove to be the means by which mankind will be able not only to survive, but also to achieve a great human synthesis.

[From the New York (N.Y.) World Journal Tribune, Sept. 18, 1966]

PAPAL PLEA FOR PEACE

VATICAN CITY.—Pope Paul VI will urge worldwide prayers in October as part of a new peace campaign to try to end the war in Viet Nam, the Vatican announced yesterday.

The Vatican said the Pope will issue an encyclical letter to the world's bishops Monday urging special prayers next month—the month of the Holy Rosary.

An authoritative source said world peace would be foremost among the subjects recommended for prayer and that the pontiff had given Viet Nam much serious thought during the two months he spent at his summer residence in Castel Gandolfo. He returned to the Vatican yesterday afternoon.

The source said the Pope felt this was the time for a new peace campaign, but his action is expected to be chiefly religious in nature rather than a specific suggestion to statesmen or a sensational gesture.

The Pope, who has been in Castel Gandolfo since July 16, returned to the Vatican yesterday afternoon. Some sources speculated he might start his push for peace in an informal speech from his window overlooking St. Peter's Square today.

"There has been a spate of rumors that something big is coming up," the source said, "but it would appear that a mediation offer or a peace-making trip to one of the countries concerned is out of the question for the time being. A call for worldwide prayer would seem more likely."

"If the Pope has some specific suggestion to make, beyond those he made in the past, he might do so later in a public speech or through diplomatic channels. But an appeal for prayers seems certain to be the first step."

APOSTOLIC LETTER

The call could take the form of an apostolic letter to the world's bishops or a message asking all Catholics to pray for world peace during October, the "month of the Holy Rosary."

The sources said the Viet Nam war and other threatening developments such as the great purge in Red China were one of the Pope's main concerns during his two-month stay in Castel Gandolfo.

Another was the question of possible changes in the church's ban on artificial birth control, on which a papal pronouncement may be forthcoming before the end of the year.

Pope Paul scored one victory by bringing about a short-lived Christmas truce in Viet Nam last winter.

In recent months, the Pope put aside his public pronouncements on Viet Nam to concentrate on such other problems as the famine in India. But Vatican sources said he was still quietly exploring all chances to end the southeast Asian war and was ready to act "whenever it appears a gesture on his part could prove helpful."

EXCERPTS FROM SPEECH BY RICHARD GOODWIN BEFORE AMERICANS FOR DEMOCRATIC ACTION, SEPTEMBER 17, 1966, WASHINGTON, D.C.

There is, however, another issue which has reduced discussions about domestic America to academic discourse, which has swallowed up the New Frontier and Great Society, and which is eroding our position throughout the world. That issue if, of course, the war in Vietnam.

The Vietnamese war is, I believe, the most dangerous conflict since the end of World War II: more dangerous than Berlin or even Korea. In those confrontations the danger was clear and sensibly appraised. The stakes were fairly obvious to both sides. Objectives

were carefully limited; and power ultimately became the handmaiden of reason and final accommodation. In Vietnam, on the other hand, the dangers are confused and unclear. Objectives are expressed in vague generalities which open to endless vistas. Moreover, from other cold war confrontations there evolved a set of tacit understandings designed to limit conflict even while it was being waged. That, for example, is the real meaning of the no-sanctuary policy carefully observed, we should remember, by both sides. Today those understandings are in grave danger of being swept away, and with them our most important protections against enlarging conflict.

The air is charged with rhetoric. We are buried in statements and speeches about negotiation and peace, the defense of freedom and the dangers of communism, the desire to protect the helpless and compassion for the dying. Much of it is important and sincere and well-meaning. Some is intended to deceive. Some of is deliberate lie and distortion. But the important thing is not what we are saying, but what we are doing; not what is being discussed, but what is happening.

And what is happening is not confusing or unclear or contradictory at all. It is not masked in obscruity or buried in secret archives. It stands in clear, vivid and towering relief against the landscape of conflict. The war is getting larger. Every month there are more men in combat, more bombs falling, greater expenditures, deeper commitments. It is the steady inexorable course of this conflict since its beginning. We have gone to the United Nations' and the war has grown larger. We have offered funds for development and talked of social reform; and the war has grown larger. We have predicted victory and called for compromise; and the war has grown larger.

There is therefore, little escape from the conclusion that it will grow larger still.

Nor is this steady pattern the consequence of inexorable historical forces. It flows from the decisions of particular men in particular places—in Washington and Hanoi, in Saigon and in the jungle headquarters of the Vietcong. It is in part a product of communist hope and drive for victory; but it is partly our decision too. And we must suppose those same decisions will continue to be made.

Nor is this, as we are sometimes told, because there is no alternative. There are dozens of alternatives. There are enclave programs, and programs to hold the centers of population. There are suggestions that we rely on pacification of the countryside rather than the destruction of the Vietcong. There are proposals to limit the bombing or to end it. There are proposals for negotiations, complete with all the specifics of possible agreement. The fact is the air is full of alternatives. They have simply been rejected in favor of another course; the present course. And we must also suppose they will continue to be rejected.

All prophecy is an exercise in probability. With that caution let us try to strip the argument of its necessary passion and discuss the probabilities which are compelled by the awesome logic of the course of events in Vietnam. Passion is important; it lies at the root of war and of hatred of war. Nor do I lack personal feeling; for only the strongest of feelings could impel me to discuss a subject with which I was so recently connected in so intimate a way. Yet we can perhaps now meet more productively on the common ground of reason. Rarely has there been greater need for such unity among men of good will.

In other places I have set forth my personal views on the conduct of the war in South Vietnam: The belief that we have an important stake in Southeast Asia, and that we must continue the battle in the South—although differently than we are now doing—until a political settlement is reached. And I have, like many others, discussed alternative routes to these objectives. Today, however, I would like to talk about the lengthening shadow of the war in the North; for in that war are the swiftly germinating seeds of the most grave danger.

In this, as in so many aspects of the war, much of the information which feeds judgment is deeply obscured. Of course, in times of armed conflict facts are often elusive and much information, of necessity, cannot be revealed. By its nature war is hostile to truth. Yet with full allowance for necessary uncertainties I believe there has never been such intense and widespread deception and confusion as that which surrounds this war. The continual downpour of contradictions, misstatements, and kaleidoscopically shifting attitudes has been so torrential that it has almost numbered the capacity to separate truth from conjecture or falsehood.

At one time we are told there is no military solution, and then that victory can be ours.

There are months when we talk about negotiations and months when we forget them.

There are times when dissenters give aid and comfort to the enemy and times when they are acting in the greatest of our traditions.

We have been reassured about efforts to reach a peaceful settlement when there is no plan or program for settlement in existence.

We are given endless statistics with a numerical precision which only masks the fact they are based on inadequate information, or guesses, or even wishful thinking. For example, if we take the numbers of enemy we are supposed to be killing, add to that the defectors, along with a number of wounded much less than our own ratio of wounded to killed, we find we are wiping out virtually the entire North Vietnamese force every year. This truly makes their continued resistance one of the marvels of the world. Unless the figures are wrong, which of course they are.

We are told the bombing is terribly costly to North Vietnam. Yet the increase in Soviet and Chinese aid, since the bombing, is far greater, in economic terms, than the loss through bombing. Except in human life, the North Vietnamese are showing a profit.

At the time of the Hanoi-Haiphong bombings last June we were told that in the first six months of 1966 enemy truck movement had doubled, the infiltration of supplies was up 150%, and infiltrated personnel increased 120%. However, the fact is we do not know, except in the most vague and general way, how much supplies are being brought in or how many men. They move at night, sometimes on trails we have not yet discovered, and the best intelligence gives only the most vague picture. We could not only be wrong, but enormously wrong. The swiftness with which we change our estimates helps show that seeming exactness conceals large uncertainties.

The statements which followed the Hanoi-Haiphong bombings are an illuminating example of this process in action.

It was said the raids would destroy a large proportion of North Vietnam's fuel capacity and this would help paralyze—or at least slow down—the process of infiltration. Yet these raids had been anticipated, alternative techniques of providing fuel had been developed, and the raids were destind to have little if any effect on the North Vietnamese capacity to make war. And this was clear at the time we bombed.

We were told, in an inside story in the New York Times, that the bombings would prove to Hanoi it could not count on its allies. The fact is that aid was stepped up as we anticipated it would be.

Within a few days a high official said fresh intelligence showed that Hanoi was now plunged in gloom, weary of war, and suffused with a sense of hopelessness, presumably at least in part as a result of the raids. Yet, there was no substantial intelligence of this kind. We have heard little about it since. And recent information indicates that the opposite was the case—the enemy's will was strengthened.

The truth is that this major and spectacular escalation in the war had had little measurable effect on the enemy's capacity or morale, and most of those who looked at the matter seriously in advance of the bombing knew it would probably be ineffective.

Yet despite confusion and misstatement, despite the enormous difficulty of grasping the realities on which policy must be based, I believe we can know that further escalation of the war in the North will only bring us farther from settlement and closer to serious danger of a huge and devastating conflict.

We began the campaign of bombing in the North as a result of the enormous and unresolved difficulties of winning the real war, the war in the South.

As predicted by almost every disengaged expert, from General Ridgway to George Kennan; and as taught by the whole history of aerial warfare, that bombing has neither brought the enemy to his knees or to the council table. It has not destroyed his capacity to make war, or seriously slowed down either infiltration or the flow of supplies. At each step it was claimed the bombing would make a decisive difference. Yet it has made hardly any difference at all. In fact, the tempo of conflict has increased.

The official statements justifying the Hanoi-Haiphong raids bore partial witness to the futility of bombing. We were told the raids were necessary because infiltration had increased enormously; and official admission of the failure of one of the most intensive bombing campaigns in world history. Despite thousands upon thousands of raids more men and supplies are flowing South and the routes of infiltration have been widened and improved. Despite the bombing, or perhaps because of it, all signs indicate the North Vietnamese will to fight has stiffened and the possibilities of negotiation have dimmed. Despite the bombing, or because of it, North Vietnam has become increasingly dependent upon Russia and China. Despite the bombing, or because of it there has been a vastly increased supply of aid to North Vietnam by Russia and China and a deepening world communist commitment to this war.

In short the bombing has been a failure, and may turn out to be a disaster.

Yet we once again hear voices calling for further escalation; just as each previous time that the bombing has failed we have been told that more bombing is necessary and new goals are articulated. First it was said we wanted to stop infiltration. Next, we would persuade the North Vietnamese to come to the Council table. Then we would punish them and force them to surrender. Now men are talking of the need to destroy their capacity to make war. And so we move inexorably up the ladder of failure toward widening devastation. And the latest goal, the destruction of enemy capacity, if ever adopted, will be the most vaguely ambitious of all. For such capacity rests on the entire society; and that whole society; factories, dams, power plants, cities themselves must be brought tumbling down.

All of this is possible despite the fact that each future escalation will probably have the effect of previous escalations. It will increase the dangers of wider war, lessen the chances of a negotiated settlement, drain away effort which should be concentrated in the South, and further alienate our allies, and have little damaging effect on the enemy's ability or will to fight.

We are sometimes asked what else we can do. I believe there are other things to do.

The war can be fought more effectively in the South. The search for a settlement can be given greater direction and brilliance. We can prepare ourselves, if necessary, to accept a long ground war of attrition leading ultimately to a political settlement. But that is not the question. If the bombing cannot win the war, if it does not work; and above all if it carries tremendous political and military risks, then it should not be increased, either out of frustration with the war or with the polls.

For the greatest danger of this course—the course of escalation—is not only in the extent of devastation and death, or the damage it does to the hope of peaceful solution, but the fact that each step of the way increases in vast proportion the danger of a huge and bloody conflict. If North Vietnam is devastated then all reason for restraint or compromise is gone. The fight is no longer a way for the South but a struggle for survival calling their still largely uncommitted armies and people into battle. Nor can China stand by and see its ally destroyed. I do not believe China wants to fight the United States, at least not yet; but it cannot stand by while we destroy North Vietnam. To do so would forfeit all its claim to moral and political leadership of militant communism. They would then be truly a paper dragon, stoking the fires of revolution only when Chinese blood and land was not at stake.

Nor is China's entrance likely to be signalled by a huge and dramatic sweep of armies across the frontier. It is far more likely that increasing destruction in the North will stimulate or compel the Chinese to accelerate the nature and kind of their assistance. Perhaps Chinese pilots will begin to fly air defense over Hanoi. The number of Chinese troops in North Vietnam may be greatly increased. Chinese anti-aircraft crews may be placed throughout the country. Thus, step by step, China acting in response to seeming necessities, may become involved in a war it did not fully contemplate, much as we have. And there are many signs that this process has already begun. This is the most likely and grave route to enlarging conflict. And if China does enter we must bomb them, for certainly we will not permit them sanctuaries or, if it comes to that, engage their armies solely in the jungles of Southeast Asia. And lastly is the Soviet Union, forced to choose between China and America.

None of this is certain. An entirely different course is possible. Yet the danger of such a chain of events grows by immeasurable strides each time we enlarge the war in the North: and if past is prologue we will continue that enlargement. Yet the fantastic fact, the truth that challenges belief, is that this is being done although virtually no one remains beside some of the engaged military and a few men in the State Department—virtually no one in the Administration or out—who believes that increased bombing will have a decisive effect on the war in South Vietnam. We are taking likely and mounting risks in pursuit of an elusive, obscure, marginal, and chimercial hope; a course which defies reason and experience alike.

Yet I believe this is the way we are going; that only beneficent and uncertain fortune can bar the way. This is not a belief born of personal fear. After all, we, or most of us, will continue to work and prosper, hold meetings and make speeches, unless all of our civilization is swallowed up. Even then enough will survive for the race to evolve and perhaps create something finer. It is rather a belief born of a fallible reason and analysis, always better able to describe our situation than guide our action, which seeks in the acts of our past and the attitudes of our present a guide for our future.

I do not wish however, to come with a counsel of despair. The surest guarantee of misfortune is resignation. Therefore, we must all make what effort we can. There are enormous differences among the critics of the war. There are those who believe we have no interest in Vietnam or even in all of Asia. There are those who wish us to withdraw. There are fierce debates over the history of the war, the nature of its participants, the goals of our enemies. There are those, like myself, who believe we should carry on the war in the South while intensifying, modifying and sharpening the search for peaceful compromise tied to some measures of de-escalation in the North. Yet our danger is so grave that those who fear the future even more than they distrust the past—a group which encompasses, I believe, the majority of the American people—must seek some common ground rather than dissipating energies in exploring the varieties of dissent. Without sacrificing individual views we must also shape a unified stand, a focal point of belief and action which can unite all who apprehend coming dangers. Only in this way can we create a voice strong enough to be heard across the country, bringing together men of diverse beliefs, adding strength to the views of those in government who share this apprehension. It must also be a clear and direct stand; one that fires response in those millions of our fellow citizens who glimpse through complexity, discord and obscurity the vision of something dark and dangerous.

I believe there is such a position. It is simply the victorious slogan of the Democratic Party in 1964. It is: No wider war. It is to oppose any expansion of the bombing. It is to speak and work against all who would enlarge the war in the North.

Such a stand will not end the war in South Vietnam. It may even prolong it. It will not fully answer the deep objections, feelings and fears of many in this room or across the country. But it can crystallize the inarticulate objections of many. It may well increase the weight and impact of the forces of restraint. Most importantly it strikes at the most ominous menace to the lives of millions and the peace of the world. Such a rallying cry requires compromise, the willingness to seek less than is desired; but that is the basic necessity of those who seek not self indulgence but to shape the course of this nation.

To be most effective this position will require more than speeches and resolutions. It will need structure and purpose. I suggest this organization work with other groups and individuals to form a national committee against widening of the war. It will not be aimed at withdrawal or even a lessening of the war in the South; although individuals who oppose escalation may also hold those views. Thus it will be open to all groups who oppose escalation in the North regardless of their position on other issues, and will be open to the millions of Americans who belong to no group but who share this basic belief and apprehension. Such a committee can provide a constant flow of objective information about Vietnam. It can keep vigil over official statements and ask the hard questions which might help separate wishful thinking from facts. It will neither be against the Administration nor for it, neither with any political party or opposed to it, neither liberal nor conservative. Its sole aim will be to mobilize and inform the American people in order to increase the invisible weight of what I believe to be the American majority in the deliberations and inner councils of government. Its purpose is to help the President and others in government by providing a counter pressure against those who urge a more militant course; a pressure for which those in government should be grateful since it will help them pursue the course of wise restraint.

Although I believe deeply in this proposal I do not wish to give the argument a certainty I do not have. The most important fact of all, the unknown which transcends all debate, are the thoughts and intentions of our adversaries and their allies. Yet skepticism born of imperfect knowledge cannot be permitted to dull the passion with which we pursue convictions or the fervor of our dissent. For we must fight against fulfillment of Yeats' prophecy which foresaw destruction if the time should come when "the best lack all conviction, and the worst are full of passionate intensity."

Some have called upon us to mute or stifle dissent in the name of patriotism and the national interest. It is an argument which monstrously misconceives the nature and process and the greatest strength of American democracy. It denies the germinal assumption of our freedom: that each individual not only can but must judge the wisdom of his leaders. (How marvelously that principle has strengthened this country—never more drastically than in the postwar period when others have buried contending views under the ordained wisdom of the state, thus allowing received error to breed weakness and even defeat. The examples are legion. The virgin lands settlement and the Great Leap Forward failed because experiment was made into unchallengeable law; while we began to catch up in space, modernized and increased our defenses, and started the Alliance for Progress because what began as dissent became national purpose). Of course the enemy is glad to see our divisions. But our concern is with America not Hanoi. Our concern is with those millions of our own people, and with future generations, who will themselves be glad to see that there were men who struggled to prevent needless devastation and thus added to the strength and the glory of the United States.

Among the greatest names in our history were men who did not hesitate to assault the acts and policies of government when they felt the good of the nation was at stake: Jefferson at a time when the integrity of the new nation was still in doubt, Lincoln during the Mexican war, Roosevelt in the midst of national depression, John F. Kennedy among cold war defeats and danger.

Only a dozen years ago, in 1954, another American leader assaulted our policy in Vietnam, saying "The United States is in clear danger of being left naked and alone in a hostile world . . . It is apparent only that American foreign policy has never in all its history suffered such a stunning reversal. What is American policy in Indochina? All of us have listened to the dismal themes of reversal and confusions and alarms and excursions which have emerged from Washington . . . We have been caught bluffing by our enemies. Our friends and allies are frightened and wondering, as we do, where we are headed . . . The picture of our country needlessly weakened in the world today is so painful that we should turn our eyes from abroad and look homewards."

It is in this same spirit of concern for our country that we should conduct our dissent as, on that day, did Lyndon B. Johnson then leader of the minority party.

It is not our privilege, but our duty as patriots, to write, to speak, to organize, to oppose any President and any party and any policy at any time which we believe threatens the grandeur of this nation and the well-being of its people. This is such a time. And in so doing we will fulfill the most solemn duty of free men in a free country: to fight to the limit of legal sanction and the most spacious possibilities of our constitutional freedoms for the safety and greatness of their country as they believe it to be.

The arguments of this speech have been practical ones founded, to the limits of my capacity and knowledge, upon the concrete

and specific realities and dangers of our present situation. But there is more than that in the liberal faith. American liberalism has many faces. It pursues divergent paths to varied and sometimes conflicting goals. It cannot be captured in an epigram or summarized in a simple statement of belief. Part of it, however, is simply and naively a belief in belief. It is the idealistic, visionary and impractical faith that action and policy and politics must rest on the ancient and rooted values of the American people. It still believes that for a nation to be great, to serve its own people and to command the respect and trust of others, it must not only do something but stand for something. It must represent in speech and act in ideals of its society and civilization.

Some part of the conflict in Vietnam may have been unavoidable, some is the result of well-intentioned error, but some must surely flow from the fact we have bent belief to the demands of those who call themselves realists or tough minded.

It is not realistic or hard-headed to solve problems and invest money and use power unguided by ultimate aims and values. It is thoughtless folly. For it ignores the realities of human faith and passion and desire; forces ultimately more powerful than all the calculations of economists and generals. Our strength is in our spirit and our faith. If we neglect this we may empty our treasuries, assemble our armies and pour forth the wonders of our science, but we will act in vain and we will build for others.

It is easy to be tough when toughness means coercing the weak or rewarding the strong; and when men of power and influence stand ready to applaud. It is far harder to hold to principle, speaking, if necessary, alone against the multitude, allowing others to make their own mistakes, enduring the frustration of long and inconclusive struggles, and standing firm for ideals even when they bring danger. But it is the true path of courage. It is the only path of wisdom. And it is the sure path of effective service to the United States of America.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (H.R. 16330) to provide for extension of the program of grants-in-aid to the Republic of the Philippines for the hospitalization of certain veterans, and for other purposes.

DESIGNATION OF OCTOBER 31 OF EACH YEAR AS NATIONAL UNICEF DAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 1283, Senate Joint Resolution 144. I do this so that the bill will become pending business.

The ACTING PRESIDENT pro tempore. The joint resolution will be stated by title.

The LEGISLATIVE CLERK. A joint resolution (S.J. Res. 144) to authorize the President to designate October 31 of each year as National UNICEF Day.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. DIRKSEN. Mr. President——

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. DIRKSEN. I yield.

ORDER FOR ADJOURNMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business this afternoon it stand in adjournment until 12 o'clock noon tomorrow.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DIRKSEN. Mr. President, I expect to speak at some length this afternoon. I have conferred with the chairman of the Subcommittee on Constitutional Amendments, the Senator from Indiana [Mr. BAYH]. I think it is his hope that there will be no vote today, and that perhaps there might be a vote tomorrow, but preferably on Wednesday if the time is taken up tomorrow.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. DIRKSEN. I yield.

Mr. BAYH. There are a few Senators who have expressed their desire to discuss this matter, not in a dilatory manner, but merely to express their opinion. For that reason, I think the Senator is correct. We would like to wait until tomorrow in order to give everyone an opportunity to discuss the matter; not drag out the matter, but so that everyone may express his opinion.

I hope that we can get to a vote tomorrow. I do not know whether we could get a unanimous consent to that effect or not, but I have no objection to directing our attention to accomplishing that end.

Mr. DIRKSEN. I appreciate that because there has been a great deal of inquiry as to whether or not there will be votes today or tomorrow because Members will want to repair home for the purpose of campaigns. Obviously, I can well understand why. We hope that we can get them all back when the occasion calls for it.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. DIRKSEN. I yield.

Mr. DOMINICK. Because of the noise, I was unable to hear whether or not the Senator is anticipating that there will be votes this afternoon or tomorrow.

Mr. DIRKSEN. There could be votes tomorrow, but I venture that this will stimulate a considerable amount of interest, and the chances are that discussion will take most of the time.

Mr. DOMINICK. I am anxious to support the Senator from Illinois [Mr. DIRKSEN] in his position. I am obligated for a portion of tomorrow. I hope that we can vote today or after 4 o'clock tomorrow afternoon.

Mr. DIRKSEN. It may be that we can contrive a Senate agreement so that the vote could come on Wednesday. I am confident that there will be other requests for time on this matter.

Mr. President, I should explain that under the rule I propose to offer a complete substitute for the joint resolution that is on the calendar calling for an observation of the anniversary of the United Nations' Children Emergency Fund.

The fact of the matter is that that joint resolution was reported by the subcommittee of which I happen to be the chairman, and of which the distinguished Senator from Arkansas [Mr. MCCLELLAN] is the other member. We can get back on track without any great difficulty, but it offers an instrumentality under the rule for presenting this resolution for constitutional amendment. I shall withhold sending it to the desk until after my remarks because I do want to ventilate this whole case and lay it before the Senate.

Mr. President, on March 22, 1966, I introduced Senate Joint Resolution 148 to meet the challenge laid down by the Supreme Court with respect to prayer in public schools. This was the celebrated case of Engel against Vitale, better known as the Board of Regents case, which originated in New York. The board of regents caused the composition of a prayer to be used in the public schools of the State of New York. The board is an official State body. The use of prayer in public schools as laid down by the board of regents was contested by certain petitioners in their behalf and in behalf of their children. The case came up on appeal before the Supreme Court of the United States and Associate Justice Black wrote the decision. The decision was based on the thesis that prayer as outlined by the board of regents was in violation of article I of the Constitution which recites that Congress shall make no law respecting the establishment of a religion or the free exercise thereof. There was one dissenting opinion written by Associate Justice Potter Stewart and, in my judgment, the dissenting opinion was absolutely right and the majority of the Court was wrong.

One year after the decision in the Engel against Vitale case, the High Court repeated, in the cases of Murray and Schempp, the general decision which was rendered in the Engel case and for the same reason. Strangely enough, when the lawyers were preparing briefs for use in cases in the New York courts, where incidentally 11 of 13 justices had concluded that there was no establishment of a religion, the conclusions which they reached from these researches were: First, that the establishment clause of the first amendment does not prohibit a recognition of Almighty God in public prayer; second, that a recognition of God was indeed a part of our national heritage; third, that the establishment clause of the first amendment was intended to prohibit a state religion, but not to prevent the growth of a religious state; fourth, that the uttering of a prayer in public assemblies was traditional throughout the Nation; and fifth, that the authorities support the position

that noncompulsory recitation of a prayer causes no pocketbook injury. One of the fruits of this case was to create consternation and confusion throughout the country, and that confusion continues to this good hour.

I turn to the action taken by the House of Representatives 2 years ago. Very quickly after the Engel decision, from 140 to 150 resolutions were introduced in the House of Representatives to deal with the problem created by the Engel case, and hearings were held in the House of Representatives in 1964. They began on April 22 and continued until June 3 of 1964 before the House Judiciary Committee. The printed hearings and exhibits and communications covered a total of nearly 2,800 pages, but because of civil rights and other matters pending before the House Judiciary Committee, no action was ever taken on any of the resolutions dealing with the question of voluntary prayer in public schools.

In March 1966, I introduced Senate Joint Resolution 148. It contains 47 Senators as sponsors. The amendment proper contains only 65 words. It was designed to clarify and to dispel confusion, and today I expect to offer that amendment as a complete substitute for the joint resolution which is now the pending business and which relates to the United Nations Children's Emergency Fund. Since the UNICEF measure deals only with commemoration of the work of this agency of the United Nations, it can be put on track at any time, but the question of voluntary prayer in public schools will not wait. Too much time has already been lost; too much confusion has been created; and too much damage has already been done.

The Engel decision must be read in the light of still another decision in the Federal courts of New York.

This was in the case of Stein against Oshinsky when 21 children and their parents petitioned the U.S. district court in New York to pass upon the right to have a voluntary prayer for the children in the public schools. The case was first heard in the district court where the court found for the petitioners. It then went to the Second Circuit Court of Appeals, where the district court was reversed. The petitioners then asked for the issuance of a writ of certiorari so that the case might go to the Supreme Court of the United States. That writ was denied by the High Court and the meaning of this action is abundantly clear: the Supreme Court of the United States has definitely closed the door upon voluntary prayer in the public schools.

Mr. BAYH. Mr. President, will the Senator from Illinois yield?

Mr. DIRKSEN. I yield.

Mr. BAYH. I should like to ask my good friend, the minority leader, how he would like to proceed on this full discussion. I do not like to interrupt his prepared remarks, particularly when they are so eloquent, but it is important that we confine debate to the cases as they actually were decided by the Supreme Court. I have a different interpretation of the Oshinsky case—which was never considered by the Supreme Court—than that which was just read into the RECORD by the Senator from Illinois. Perhaps he would rather wait and discuss this matter after he has presented his remarks, which will be fine with me, but I want to make sure that we do have some colloquy on this particular subject.

Mr. DIRKSEN. I would prefer to finish my remarks first, if the Senator will agree.

Mr. BAYH. Fine.

Mr. DIRKSEN. Mr. President, I reassert at this point—because we have got the U.S. district court and the circuit court's decision right here—that it was on the petition for a writ of certiorari, so that the record might go up and be reviewed by the Supreme Court. The Court said no and when it did, inasmuch as voluntary prayer was involved in the Stein against Oshinsky case, that simply meant in my language as a lawyer that the court closed the door on voluntary prayer in the public schools.

Mr. BAYH. Mr. President, will the Senator from Illinois yield?

Mr. DIRKSEN. I yield.

Mr. BAYH. It is that very point that I should like to clarify in the RECORD, at a time the Senator from Illinois chooses, that it was not the matter of voluntary prayer that was in consideration but who was going to make the school curriculum, the parents association or the schools.

The Court decided that the curriculum should be decided by the school officials and not by the parents of the 13 children who wanted prayer incorporated within the curriculum. In fact, the Court said, for the sake of the outcome in the Oshinsky case, that they were willing to consider the voluntary prayer in question as consitutional. When the Senator has finished his remarks, I will be glad to read into the RECORD and compare with him the excerpts from the decision itself.

Mr. DIRKSEN. Well, Mr. President, all I can say is that the decisions have to speak for themselves. We have them here. But now, as I indicated before, the one sensible opinion in the Engel against Vitale case was that written by Associate Justice Stewart.

I ask unanimous consent to have this dissenting opinion printed in full in the RECORD.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

[June 25, 1962.]

SUPREME COURT OF THE UNITED STATES—STEVEN I. ENGEL ET AL., PETITIONERS, *v.* WILLIAM J. VITALE, JR., ET AL., ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK—No. 468.—OCTOBER TERM, 1961

Mr. Justice Stewart, dissenting.

A local school board in New York has provided that those pupils who wish to do so may join in a brief prayer at the beginning of each school day, acknowledging their dependence upon God and asking His blessing upon them and upon their parents, their teachers, and their country. The Court today decides that in permitting this brief nondenominational prayer the school board has violated the Constitution of the United States. I think this decision is wrong.

The Court does not hold, nor could it, that New York has interfered with the free exercise of anybody's religion. For the state courts have made clear that those who object to reciting the prayer must be entirely free of any compulsion to do so, including any "embarrassments and pressures." Cf. *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624. But the Court says that in permitting school children to say this simple prayer, the New York authorities have established "an official religion."

With all respect, I think the Court has misapplied a great constitutional principle. I cannot see how an "official religion" is established by letting those who want to say a prayer say it. On the contrary, I think that to deny the wish of these school children to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of our Nation.

The Court's historical review of the quarrels over the Book of Common Prayer in England throws no light for me on the issue before us in this case. England had then and has now an established church. Equally unenlightening, I think, is the history of the early establishment and later rejection of an official church in our own States. For we deal here not with the establishment of a state church, which would, of course, be constitutionally impermissible, but with whether school children who want to begin their day by joining in prayer must be prohibited from doing so. Moreover, I think that the Court's task, in this as in all areas of constitutional adjudication, is not responsibly aided by the uncritical invocation of metaphors like the "wall of separation," a phrase nowhere to be found in the Constitution. What is relevant to the issue here is not the history of an established church in sixteenth century England or in eighteenth century America, but the history of the religious traditions of our people, reflected in countless practices of the institutions and officials of our government.

At the opening of each day's Session of this Court we stand, while one of our officials invokes the protection of God. Since the days of John Marshall our Crier has said "God save the United States and this Honorable Court."[1] Both the Senate and the House of Representatives open their daily Sessions with prayer.[2] Each of our Presidents, from George Washington to John F. Kennedy, has upon assuming his Office asked the protection and help of God.[3]

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[1] See Warren, The Supreme Court in United States History, Vol. 1, p. 469.

[2] See Rule III, Senate Manual, S. Doc. No. 2, 87th Cong., 1st Sess. See Rule VII, Rules of the House of Representation, H.R. Doc. No. 459, 86th Cong., 2d Sess.

[3] For example:

On April 30, 1789, President George Washington said: ". . . it would be peculiarly improper to omit in this first official act my fervent supplications to that Almighty Being who rules over the universe, who presides in the councils of nations, and whose providential aids can supply every human defect, that His benediction may consecrate to the liberties and happiness of the people of the United States a Government instituted by themselves for these essential purposes, and may enable every instrument employed in its administration to execute with success the functions allotted to His charge. In tendering this homage to the Great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own, nor those of my fellow-citizens at large less than either. No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men more than those of the United States.

"Having thus imparted to you my sentiments as they have been awakened by the occasion which brings us together, I shall take my present leave; but not without resorting once more to the benign Parent of the Human Race in humble supplication that, since He has been pleased to favor the

The Court today says that the state and federal governments are without constitutional power to prescribe any particular form of words to be recited by any group of the American people on any subject

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American people with opportunities for deliberating in perfect tranquillity, and dispositions for deciding with unparalleled unanimity on a form of government for the security of their union and the advancement of their happiness, so His divine blessing may be equally *conspicuous* in the enlarged views, the temperate consultations, and the wise measures on which the success of this Government must depend."

On March 4, 1797, *President John Adams said:*

"And may that Being who is supreme over all, the Patron of Order, the Fountain of Justice, and the Protector in all ages of the world of virtuous liberty, continue His blessing upon this nation and its Government and give it all possible success and duration consistent with the ends of His providence."

On March 4, 1805, *President Thomas Jefferson said:*

"I shall need, too, the favor of that Being in whose hands we are, who led our fathers, as Israel of old, from their native land and planted them in a country flowing with all the necessaries and comforts of life; who has covered our infancy with His providence and our riper years with His wisdom and power, and to whose goodness I ask you to join in supplications with me that He will so enlighten the minds of your servants, guide their councils, and prosper their measures that whatsoever they do shall result in your good, and shall secure to you the peace, friendship, and approbation of all nations."

On March 4, 1809, President James Madison said:

"But the source to which I look . . . is in . . . my fellow-citizens, and in the counsels of those representing them in the other departments associated in the care of the national interests. In these my confidence will under every difficulty be best placed, next to that which we have all been encouraged to feel in the guardianship and guidance of that Almighty Being whose power regulates the destiny of nations, whose blessings have been so conspicuously dispensed to this rising Republic, and to whom we are bound to address our devout gratitude for the past, as well as our fervent supplications and best hopes for the future."

On March 4, 1865, President Abraham Lincoln said:

"Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said 'the judgments of the Lord are true and righteous altogether.'

"With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

On March 4, 1885, President Grover Cleveland said:

"And let us not trust to human effort alone, but humbly acknowledging the power and goodness of Almighty God, who presides over the destiny of nations, and who has at all times been revealed in our country's history, let us invoke His aid and His blessing upon our labors."

On March 5, 1917, President Woodrow Wilson said:

"I pray God I may be given the wisdom and the prudence to do my duty in the true spirit of this great people."

On March 4, 1933, President Franklin D. Roosevelt said:

"In this dedication of a Nation we humbly ask the blessing of God. May He protect each and every one of us. May He guide me in the days to come."

On January 21, 1957, President Dwight D. Eisenhower said:

"Before all else, we seek, upon our common labor as a nation, the blessings of Almighty God. And the hopes in our hearts fashion the deepest prayers of our whole people."

On January 20, 1961, President John F. Kennedy said:

"The world is very different now. . . . And yet the same revolutionary beliefs for which our forebears fought are still at issue around the globe—the belief that the rights of man come not from the generosity of the state, but from the hand of God.

* * * * *

"With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own."

touching religion.[4] The third stanza of "The Star-Spangled Banner," made our National Anthem by Act of Congress in 1931,[5] contains these verses:

"Blest with victory and peace, may the heav'n rescued land
Praise the Pow'r that hath made and preserved us a nation!
Then conquer we must, when our cause it is just,
And this be our motto 'In God is our Trust.'"

In 1954 Congress added a phrase to the Pledge of Allegiance to the Flag so that it now contains the words "one Nation *under God,* indivisible, with liberty and justice for all."[6] In 1952 Congress enacted legislation calling upon the President each year to proclaim a National Day of Prayer.[7] Since 1865 the words "IN GOD WE TRUST" have been impressed on our coins.[8]

Countless similar examples could be listed, but there is no need to belabor the obvious.[9] It was all summed up by this Court just ten years ago in a single sentence: "We are a religious people whose institutions presuppose a Supreme Being." *Zorach* v. *Clauson,* 343 U.S. 306, 313.

I do not believe that this Court, or the Congress, or the President has by the actions and practices I have mentioned established an "official religion" in violation of the Constitution. And I do not believe the State of New York has done so in this case. What each has done has been to recognize and to follow the deeply entrenched and highly cherished spiritual traditions of our Nation—traditions which come down to us from those who almost two hundred years ago avowed their "firm reliance on the Protection of Divine Providence" when they proclaimed the freedom and independence of this brave new world.[10]

I dissent.

Mr. DIRKSEN. Mr. President, I pursue in a little more detail what Justice Potter Stewart referred to there as our tradition and that our tradition is a religious one.

On July 30, 1956, President Eisenhower signed a resolution which made "In God We Trust" our national motto. That was done in Public Law 851 of that year.

On July 11, 1955, Congress passed and the President approved Public Law 140, which placed the inscription "In God We Trust" on our coins and currency.

When the Pilgrims came to this country one of the first things they did was to enter into the Mayflower Compact on November 11, 1620, and the first words of that compact are: "In the name of God, Amen."

On May 19, 1643, the New England Confederation was entered into. There they gave thanks for "a wise Providence of God."

At the Constitutional Convention in September of 1787, Benjamin Franklin addressed the convention and noted the slow progress which had been made and reproved the members of the convention for their neglect of prayer and urged that the delegates by their prayers implore the assistance of Heaven and its blessings on their deliberations every morning in the assembly hall before they proceed to business.

On July 4, 1776, the Declaration of Independence was adopted and first signed by John Hancock. In it they wrote:

And for the support of this Declaration, with a firm Reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Every President of the United States, from George Washington in 1789 to President Johnson in 1965, has found it comforting, inspiring, and useful to recite our dependence on the grace of God and to implore His wisdom, His guidance, and His blessings.

In the preamble of each State constitution is a statement regarding the faith in God of the people of their State in forming the constitution.

Our public buildings bear witness to our faith in God. One can find it in the

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[4] My brother Douglas says that the only question before us is whether government "can constitutionally finance a religious exercise." The official chaplains of Congress are paid with public money. So are military chaplains. So are state and federal prison chaplains.

[5] 36 U.S.C. § 170.

[6] 36 U.S.C. § 172.

[7] 36 U.S.C. § 185.

[8] 13 Stat. 517, 518; 17 Stat. 427; 35 Stat. 164; 69 Stat. 290. The current provisions are embodied in 31 U.S.C. §§ 324, 324a.

[9] I am at a loss to understand the Court's unsupported *ipse dixit* that these official expressions of religious faith in and reliance upon a Supreme Being "bear no true resemblance to the unquestioned religious exercise that the State of New York has sponsored in this instance." See p. —, *supra,* n. 21. I can hardly think that the Court means to say that the First Amendment imposes a lesser restriction upon the Federal Government than does the Fourteenth Amendment upon the States. Or is the Court suggesting that the Constitution permits judges and Congressmen and Presidents to join in prayer, but prohibits school children from doing so?

[10] The Declaration of Independence ends with this sentence: "And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor."

Capitol, in the Prayer Room, in our national motto, in the Supreme Court Building, the White House, the Library of Congress, the Washington Monument, the Lincoln Memorial, the Tomb of the Unknown Soldier, and even on Union Station which stands not far from the National Capitol.

When the manuscript of Daniel Webster's speech at the dedication of the cornerstone for the new Senate and House wings was deposited in that cornerstone and subsequently retrieved, it concluded with these words among others:

> If, therefore, it shall hereafter be the will of God that this structure should fall from base, that its foundations be upturned and this deposit brought to the eyes of men, be it then known that on this day the Union of the United States of America stands firm, that their Constitution still exists unimpaired with all its original usefulness and glory; and all here assembled, whether belonging to public life or to private life, with hearts devotedly thankful to Almighty God for the preservation of the liberty and happiness of the country, unite in sincere and fervent prayers that this deposit and the walls and arches, the domes and towers, the columns and entablatures now being erected over it may endure forever. God save the United States of America.

Our national songs and anthems bear witness to our religious traditions.

The fourth stanza of "The Star-Spangled Banner" reads:

> And this be our motto: "In God is our trust".

In the fourth stanza of "America" we find the words:

> Our Father's God to Thee, Author of Liberty,
> To Thee we sing.
> Long may our land be bright, With Freedom's
> holy light,
> Protect us by thy might, Great God, our
> King.

In that lovely song "America The Beautiful" we find these words in the first stanza: "God shed His grace on thee."

In the second stanza we find: "God mend thine every flaw."

In the third stanza we find the words: "May God thy gold refine."

In the fourth stanza we find the words: "God shed His grace on thee."

These are but a part of the great religious tradition of our land.

Now, there are some destroyers of this tradition, and first on the list I would put the atheists, who do not believe in God. They differ from the agnostics. The atheists do not believe in God. The agnostics do not know whether to or not.

The basic atheist concept—those who do not believe in God—was revealed by a lady named Madalyn Murray, of Baltimore, Md., in a letter to Life magazine some time ago. She presumed to speak for all atheists as she unfolded that story and some of their plans for America. She said:

> We find the Bible nauseating, historically inaccurate, replete with the ravings of mad men. We find God to be sadistic, brutal and a representative of hatred and vengeance. We find the Lord's Prayer to be that muttered by worms groveling for meager existence in a traumatic paranoid world. The business of the public schools, where attendance is compulsory, is to prepare children to face the problems on earth, not to prepare for Heaven—which is a delusional dream of the unsophisticated minds of the ill-educated clergy. Fortunately we atheists can seek legal remedy through our Constitution. * * *

There, Mr. President, we have the atheists view. But there are other classes of destroyers. There are the free thinkers who assume a liberal posture.

Mr. J. Marcellus Kik, in an article in the April 26, 1963, issue of Christianity Today, enumerates the demands of liberalism as quoted from the Index of January 4, 1873, which was the organ of the Liberal League. There they set out a nine-point program of their demands. These included: taxation of church property; abolition of chaplaincies in Congress, legislatures, Army, Navy, prisons, asylums and all other institutions supported by public funds; abolish the use of the Bible in any form in public schools; prohibit recognition of religious festivals and feasts by the President of the United States or by the Governors; abolish the judicial oath in courts; abolish the oath in all departments of Government; repeal laws which call for enforcement of the observance of Sunday as the Sabbath; administer our entire political system on a strictly secular basis. Here then is the thesis of the free thinkers who would secularize and make completely worldly our civilization and our tradition.

But there is still another group in this trinity, and they are the Communists, who seek to communize this country. It should be observed that Karl Marx, the great apostle of communism, had actually only two basic theses: the first was to destroy capitalism and the second to dethrone God.

That is what Marxism finally adds up to.

J. Edgar Hoover, in his book entitled "Masters of Deceit" makes it quite clear that communism is the monumental enemy of any religion that believes in a Supreme Being. Khrushchev affirmed the fact when he said:

> Don't think that the communists have changed their mind about religion. We remain the atheists that we have always been. We are doing as much as we can to liberate those people who are still under the spell of this religious opiate.

Here you have some of the groups dedicated to the destruction of our religious tradition and that of course includes prayer in the public schools.

It is time to give thought, Mr. President, in these premises, to some spiritual education in this country. Where will we find the real answer to juvenile delinquency and to the strange aberrations and extremisms of the present day unless we find it in spiritual education? And one of the greatest forces in this arsenal of education is prayer. Freedom of voluntary prayer or participation in prayer is the fifth and perhaps the greatest of the freedoms and ranks high above those other freedoms that were announced so long ago.

The hearings before the subcommittee were quite interesting insofar as the witnesses were concerned.

Those who came to oppose Senate Joint Resolution 148 obviously resorted to the old cliche of separation of church and State, together with some other reasons which were assigned. The opposition included the executive secretary of one of the church denominations; the president of a theological seminary; an attorney from New York representing the Humanist Association; the director of social relations for one of the churches; the American counsel of one church group; two professors of law; the American Civil Liberties Union; certain public relations directors for churches; the associate secretary of the board of social concerns for one of the church groups.

The Board of Social Concerns. Maybe that is the trouble with the country and the world today—we are so given to social concerns that we have no time left for concern with the soul.

As I thought of these witnesses, I wondered where the pastors were; I wondered where the shepherds of the flock were; I wondered where the ministers were—all those who sit at bedsides to comfort the sick, who come to bereaved homes to comfort those who have been bereaved, those who have constant contact with their flock, those who minister to the spiritual needs of the common man. Where were they?

I do not know whether they were invited. What we had before the subcommittee were the professionals, who can be found at these hearings any old time to testify on matters of this kind.

At this point, Mr. President, I ask unanimous consent to have printed in the RECORD an article written by Charles E. Rice, entitled "Where Are the Clergymen?" and subtitled "If Senator DIRKSEN's Prayer Amendment Is To Have Any Chance of Passage, Clergymen Must Support It. Why Don't They? For Fear of Losing Federal Aid." It was published in the National Review of August 23, 1966. Mr. Rice does a pretty good job in that article, and I think this is the place to put it in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WHERE ARE THE CLERGYMEN?—IF SENATOR DIRKSEN'S PRAYER AMENDMENT IS TO HAVE ANY CHANCE OF PASSAGE, CLERGYMEN MUST SUPPORT IT. WHY DON'T THEY? FOR FEAR OF LOSING FEDERAL AID

(By Charles E. Rice)

To the surprise of many, Senator EVERETT M. DIRKSEN announced last January that he would force a Senate fight for a constitutional amendment to undo the school prayer decisions handed down by the Supreme Court in 1962 and 1963. In the first decision, the Court invalidated the recitation in public schools of the state-composed Regents' prayer, and in the second ruling the Court forbade the recitation of the Lord's Prayer and devotional reading of the Bible in public schools. In neither case was any child compelled to participate in the exercise. Since then, a federal circuit court has ruled, in a case arising in Whitestone, New York, that public school teachers cannot even permit pupils to recite prayers in classrooms by themselves and on their own initiative. The Supreme Court refused to review this last ruling.

DORMANT ISSUE REVIVES

An earlier effort to gain congressional approval of a prayer amendment foundered in 1964 on the obstructionism of House Judiciary Committee Chairman EMANUEL CELLER, Democrat, of New York, the hostility of the press and, in part, a withdrawal of support for the amendment by leaders of the Roman Catholic Church. For the past year or so the issue has lain dormant.

The Dirksen prayer amendment provides: "Nothing contained in this Constitution shall prohibit the authority administering any school, school system, educational institution or other public building supported in whole or part through the expenditure of public funds from providing for or permitting the voluntary participation by students or others in prayer. Nothing contained in this article shall authorize any such authority to prescribe the form or content of any prayer."

There are two issues here. First, is the amendment worth adopting? Second, what are its chances of success?

To judge the merits of the Dirksen amendment, we must remember that the Supreme Court's prayer decisions have generated two dangerous trends. One is the elimination of various religious manifestations from public life. The other is the threat to the tax privileges of religious organizations.

The first trend, toward the excision of religious manifestations, follows from the basic rationale of the decisions. For there the Court enjoined upon government a perpetual suspension of judgment on the very question of whether God exists. Thus it was that Justice William Brennan labored in a concurring opinion in the 1963 case to show that the ruling did not require such things as the erasure of God's name from our coinage, the repeal of the national motto, etc. And Brennan's rationale, which epitomized the basic meaning of the decision was that "The reference to divinity in the revised pledge of allegiance, for example, may merely recognize the historical fact that our Nation *was believed to have been founded under God*" (emphasis added). In short, the words "under God" can remain in the pledge only if they are not meant to be believed and are a mere historical commemoration of the fact that the founders, deprived of the insight of our ruling Justices, actually believed that this nation was "under God." The same reasoning would apply to the Declaration of Independence, which contains four affirmations of the existence of God. It does not seem to bother the Court that this suspension of judgment on the existence of God results in a governmental preference of agnosticism, which is now recognized by the Court as a non-theistic religion. In line with the Court's reasoning, Nativity scenes have been banned on public property unless presented purely in "a cultural vein." The kindergarten children in the Whitestone case were forbidden to recite, before eating their cookies and entirely on their own initiative, the "Romper Room" prayer: "God is great, God is good. And we thank Him for our food. Amen." In Maryland, every pending criminal indictment in the state was invalidated because the grand and petit jurors were required to take an oath affirming their belief in God. In New York City, Jewish teachers cannot wear the yarmulka in public school classrooms, although the Jewish code of Shulchan Aruch requires that it be worn. In public schools throughout New York State, pupils are forbidden to recite devotionally the last stanza of the national anthem, because it concludes with the hateful phrase, "In God is our trust."

SECULARIZING MANDATES

And so it goes. Moreover, we may fairly expect that the secularizing mandates are ultimately going to be applied to parochial schools receiving government aid where that aid entails substantial public supervision over the use of the funds. Thus, Roman Catholic schools in Brooklyn were allowed to participate in Operation Head Start last year only after they took the crucifixes off the classroom walls and eliminated sectarian and even moral instruction from the school day; it was only at the personal intercession of Sargent Shriver that the nuns were allowed to teach in their habits in their own schools. It is true that in Operation Head Start, unlike the ordinary case of public aid to religious schools, public school children came onto the parochial school premises. But this distinction has no enduring significance. For the courts are likely to hold before too long that parochial schools receiving substantial public aid are instrumentalities of the state to the extent that they cannot prefer their own parishioners in their admission policies and therefore must open their doors to the community at large. At that point, any difference between public and parochial schools will be of interest mainly to the bookkeepers.

The second trend created by the school prayer decisions is equally dangerous. The issue is whether churches will be exempt from taxation on their property and income and whether donors to churches will be permitted to deduct their contributions on their own tax returns. (Churches are already, and properly, of course, subject to taxation on commercial enterprises which they conduct for profit.) The Supreme Court has agreed to review a Maryland decision upholding the religious tax exemptions, and the issue may soon be resolved. It is fair to say that the logic and language of the school prayer decisions indicate that religious tax privileges will be sustained only insofar as they benefit the secular activities of religious organizations. Thus a church could be exempt from taxation on a hospital it conducts, because non-profit hospitals in general are exempt. But a church would have no exemption for its church building. Similarly, it would seem that a donor could deduct his contribution to a parochial school only to the extent that it was used for the teaching of secular subjects. One could not, it would seem, deduct a gift used by the school to buy catechisms rather than readers. But suppose the school teaches reading with stories of Christ and the saints?

In the real world today, any significant restriction of the existing tax privileges of churches would drive many out of existence and would greatly hamper the work of all of them. One further effect of the curtailment of tax privileges would be to make the churches increasingly dependent upon government subsidies, which in turn would accelerate the secularization of church-related schools. Incidentally, there is also language in the 1963 prayer decision which could foreshadow an elimination of military chaplains from the public payroll, thus putting an added financial burden on the churches.

The Dirksen amendment is limited in scope and deals only with prayer as such. It might be argued that the amendment creates an implication that because prayer alone is expressly permitted, all other religious practices and public aids to religion are forbidden. However, the negative language of the proposal ("Nothing in this Constitution shall prohibit. . . .") is sufficient to prevent the application of that technical rule of construction.

Senator DIRKSEN claims that his amendment is not designed "to reverse the Court" but rather is a "clarification." But regardless of his opinion, the amendment would reverse the Court on the central issue of the school prayer decisions. It would legitimize the official recognition of the existence of God. And while it would not specifically cover tax privileges, chaplains and miscellaneous matters, the Supreme Court has been known in the past to follow the election returns and it is a reasonable expectation that the present members of the Court would get the point. The last sentence of the amendment would not validate an officially-composed Regents' Prayer, but the limited meaning of the word "prescribe" would allow sufficient room for officials to leave the form and content of the voluntary prayer up to a local consensus. And, of course, the First Amendment's protection of the free exercise of religion would not be affected by the Dirksen amendment. No one could be coerced in any way to participate in any exercise. But the amendment would end the present ludicrous condition where a small minority of zealots is enabled to impose its dislike of prayer or of God upon the great majority.

The language of the Dirksen amendment is sound and it is worth supporting. But what are its prospects? Public opinion polls from 1962 to the present time have shown a great majority in favor of prayer in the public schools. The support, however, has been inarticulate and passive. But now, perhaps because of the Vietnam crisis, a groundswell appears to be developing. There is no doubt that, if the amendment reached the floor of the House and Senate, it would pass and would be ratified by the states. For what politician will vote against voluntary prayer? But the question is whether the existing popular support will be strong enough to break the parliamentary barriers in Congress.

There is one factor which may determine the outcome. If the churches, and especially the leaders of the Catholic Church, would support the amendment it would certainly pass. It was the withholding of support by Catholic leaders which played a crucial role in defeating the amendment in 1964. When the Senate Judiciary Committee held hearings in 1962, four Catholic spokesmen, including the representative of Francis Cardinal Spellman of New York, supported the amendment and no Catholic leader opposed it. Two years later, however, when the House Judiciary Committee held its hearings, there were nine Catholics in favor of the amendment (but no representative of the hierarchy, with the exception of Bishop Fulton J. Sheen, whose testimony was bracketed in press accounts with that of Governer George Wallace, who appeared the same day in favor of the amendment). But in those 1964 hearings, there were seventeen Catholic witnesses opposed, including spokesmen for many Catholic periodicals, the lay director of the Legal Department of the National Catholic Welfare Conference, and a couple of lawyer-priests.

The rise in Catholic opposition to the amendment was apparently due in part to an unfounded fear that a prayer amendment would upset the existing First Amendment balance on the matter of federal aid to church-related schools. It is not unreasonable to surmise that the opposition was also due in part to a fear that Catholic support of the amendment would antagonize certain elements whose neutrality or support would be necessary for the enactment of a major program of such federal aid. Since then the Church has received its federal aid, through the Elementary and Secondary Education Act of 1965. But some Catholic school administrators are beginning to discover that there is no such thing as a free lunch and that government aid brings government control.

The Church's concern about aid to education is understandable. For it is true that a major program of federal aid to public schools only would tend to drive out of existence those private schools excluded from the benefits. But the Catholic Church lobbied informally but effectively for a massive program of federal grants to its schools, and ignored alternative proposals which would have benefited those schools through the

allowance of tax credits or tax deductions to parents for tuition paid to the schools. The tax credit or deduction program would have enabled private schools to raise their tuition and would not have entailed significant government controls because the tuition money the schools would have received from the parents would never have been government money. There have been several proposals of this sort in the Congress, including a limited system of "G.I. Bill" type grants to parents whose income is too small to benefit from tax credits or tax deductions. When Senator ABRAHAM RIBICOFF proposed the tax deduction idea on the college level, former Commissioner of Education Keppel opposed it because, under it, "We could not accomplish our social objectives." The Catholic Church may be about to learn that the social objectives of the federal bureaucrats do not include an independent system of parochial schools.

The reality of government control as an incident to government aid should surprise nobody. The same tendency is operating in the racial area where among other things it is not overly visionary to forsee that parochial schools in New York State will be subjected, before long, to the arrogant system of artificial racial balancing instituted in the public schools of that state. But what is surprising is that the leaders of the Catholic Church torpedoed the school prayer amendment when it was quite obvious that the combination of the Supreme Court's prayer ruling and a massive program of federal aid would lead inexorably to the secularization of the parochial school.

It remains to be seen whether Catholic leaders will support Dirksen's amendment. Frankly, it does not appear likely that they will do so in significant numbers, although Cardinal Cushing of Boston and Bishop Bernard J. Flanagan of Worcester, Mass., among a few others, have spoken in support of it. The silken threads attached to the handouts are very strong. If support from the Catholic and other churches is not forthcoming the popular pressure on the Congress will have to be overwhelming to achieve success. As a matter of fact, there is a fair chance that it will be strong enough and that we will have a prayer amendment. If we do, and if it is adopted without the support of the leaders of the Catholic Church, the Church will have become irrelevant, and even a negative factor, in a central church-state issue of our day. It may be that some of the leaders of the Church are unduly preoccupied with the construction of buildings which the secularists will control and too little concerned with what is going to be taught to the children in those schools. Bishop Fulton J. Sheen once wrote: "One can almost formulate a law: in days of prosperity, the Church has administrators; in days of adversity, the Church has shepherds . . . When primacy is given to mortar in the Church, mortals lose their significance."

Those who support the Dirksen prayer amendment should insist that their clerics, of whatever denomination, declare themselves on the issue. And they should demand support from their representatives and senators. The effective groups supporting the amendment are, Citizens for Public Prayer, Box 1776, Rutland, Massachusetts, and Constitutional Prayer Foundation, 903 Munsey Building, Baltimore, Maryland 21202.

Mr. DIRKSEN. I also have an article entitled "Personally Speaking," and subtitled "Have Churches Lost Contact?" written by Woolsey Teller. I ask unanimous consent that that article, in its entirety, be printed in the RECORD as a part of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

PERSONALLY SPEAKING: HAVE CHURCHES LOST CONTACT?

(By Woolsey Teller)

Whom do the religious leaders of the nation represent? Whom, in fact, do they lead? That's the pertinent question raised by Representative BARBER B. CONABLE Jr. (R-N.Y.). He suspects that the leadership doesn't represent either the majority of churchgoers or the majority of clergymen—at least not in his own 37th Congressional District, considered a fairly typical American district.

Representative CONABLE notes that the National Council of Churches (NCC) and a number of other religious leader groups have testified against the proposed amendment of Senator EVERETT DIRKSEN (R-Ill.) which would permit voluntary prayers in public schools. The keyword is "voluntary." No one would be compelled to pray.

Skeptical as to whether these religious groups actually represent the rank and file clergymen, Representative CONABLE, working from phone books, mailed some 500 questionnaires to the identified clergymen of his district. The questionnaire gave the wording of the amendment and asked for reactions from the gentlemen of the cloth. The wording, short and simple, is:

"Nothing contained in this Constitution shall prohibit the authority administering any school, school system, educational institution or other public building supported in whole or in part through the expenditure of public funds from providing for or permitting the voluntary participation by students or others in prayer. Nothing contained in this article shall authorize any such authority to prescribe the form and content of any prayer."

Of 137 answers to the questionnaire 120 clergymen favored the amendment and 17 opposed it.

The amendment would make possible, as a matter of right, the choice of participating in voluntary prayer. The stress here is on "choice." No one would be compelled to pray.

Generally ignored in the controversy raging over the amendment is the fact that the various states have compulsory education laws. A person is obligated to attend school up until a certain age, or until completing certain studies, varying from state to state. For the time that the youths are in school, approximately one-third of their waking hours, five days out of the week, they are now prohibited from overt praying. The U.S. Constitution after which the state constitutions are modeled, says in Article I of the Bill of Rights, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

As for the first part of the phrase, the Dirksen amendment obviously would not establish a religion. As to the second part, when a religious person is compelled to spend one-third of his waking hours in a building where he is prevented from praying is he not being prohibited from the free exercise of his religion?

No one has suggested that children be prohibited from attending to their physical needs when they are in school. There are regular lunch hours to satiate human hunger. Yet those who have spiritual hunger are prevented from assuaging it.

Some people fear that the Dirksen amendment would endanger the traditional American concept of separation of state and church. No one questions their right to that view. The question here is whether the religious leadership opposing the Dirksen amendment represents the sentiments of most religious people.

Representative CONABLE, in assessing the 120 to 17 returns he got from clergymen favoring the amendment said, "If this is typical, the national church group leaders should perhaps poll their members before descending too vigorously on Capitol Hill, the citadel of representative government."

Adding weight to CONABLE's views were the words of Rev. Dr. David Hunter, deputy general secretary of the NCC, who testified against the amendment. He said he thought church "leaders" are "ahead" of the thinking of their flocks on public issues.

Rather than being ahead of the people the religious leadership may simply have lost contact with them. That could be dangerous—for the leadership, that is. It is both a religious and a democratic concept that the voice of the people is the voice of God. Those who are so far "ahead" of the people that they can't hear the people's voice are surely deaf to the voice of God.

Mr. DIRKSEN. This article makes reference to a question raised by Representative BARBER B. CONABLE, JR., of New York, who suspected that the leadership does not represent either the majority of church-goers or the majority of clergymen, at least not in his own 37th Congressional District, considered a fairly typical American district.

He went to the trouble to carefully document all the ministers in that district. He wanted to find out how they really thought, or whether the National Council of Churches was speaking for them, because the national council came before the subcommittee.

He discovered, from 137 answers, from 137 clergymen of all faiths, that 120 favored the amendment that I introduced, and 17 opposed it.

Now, that is a strange kettle of fish, because I now get around to other items that I wish to have printed in the RECORD, and I think the next one should be the action taken by the Veterans of Foreign Wars, a farflung organization, not merely from coast to coast, but in nearly every country on earth.

They passed a resolution at their 67th national convention, held in New York, August 21, 1966, and here it is:

Whereas, there are those who would destroy all religion and erase all mentioning of God from our lives; and

Whereas, all prayers have been banned from our public schools, and

Whereas, legislation has been introduced in the United States Congress to allow voluntary prayers in our schools, and

Whereas, the Veterans of Foreign Wars firmly believes in God; now, therefore,

Be it resolved, by the 67th National Convention of the Veterans of Foreign Wars of the United States that we endorse and support the members of Congress in their fight to restore prayers in our schools; and

Be it further resolved, that the Veterans of Foreign Wars of the United States support legislation, introduced in the United States Senate by Senator EVERETT DIRKSEN, to restore voluntary prayer to our public schools; and

Be it further resolved, that every member of the V.F.W. actively support Senate Joint Resolution 148 by communicating with his Congressman, requesting that he aid us in our effort to return prayer to our public schools.

Now, Mr. President, I come to, first, Cardinal Cushing, a very eminent divine

in the Catholic Church. In the Pilot, which is published in Boston, there appears regularly a section entitled "News Notes From the Cardinal."

There are two articles here that I think properly deserve a part in this discussion. The first one is entitled "The Sweetness of Prayer." The second is entitled "Prayer in the Schools."

I shall read only a portion at the conclusion of the second article. It reads:

In the midst of the controversy over prayer in the public schools many honored public servants have voiced their belief that such prayer is not only useful, but necessary. For instance, Senator SALTONSTALL and Senator DIRKSEN, among the others. They do not share the shoddy opinions of self-constituted authorities on matters about which they have no authority to speak.

Mr. President, I ask unanimous consent that these two articles be printed at this point in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

THE SWEETNESS OF PRAYER

"There is nothing in the world sweeter than prayer!" So declared Senator DIRKSEN in a recent interview. He continued by stressing the injustice and loss to the nation by the act which removed prayer from the public schools . . . "Now there are those who want to delete the words, 'In God Is Our Trust,' from the Star Spangled Banner. There is but one country where God is so derided and excluded—the Soviet Union."

In time of joy and success the prayer of thanksgiving to the giver of all good gifts tells Him that His goodness is appreciated. Unfortunately, it seems probable that few pay Him this acknowledgement in comparison with those who do. In time of pain and grief, occasioned by the loss of a dear one, by the shattering of health, the loss of needed work and other burdens that at one time or another afflict people, prayer is most of all consoling and strengthening. It reminds us that we have not here a lasting city, but look for one to come.

One who meditates on the sufferings of the Redeemer with crucifix in hand, finds a wonderful help to the restoration of what may have been lost when the blow first struck. In this month of May, and in all the other months, we have a Model who, after Christ, suffered most. Mary, His Mother, shared all His Sacrifices. She wants to share with us the graces they brought. Mary is Queen of Sorrows. After her Divine Son's Ascension she was left a bereaved Mother, awaiting the time when He would call her to Himself.

"There is nothing in the world sweeter than prayer!" When a high government official so declares, we know that Jesus and Mary listen with joy!

PRAYER IN THE SCHOOL

Now and then the host of a program over the air gives his opinion in a manner which disedifies and troubles many of his listeners. Recently, one such individual professed that prayer in the public schools was a "useless thing." His remark was not only out of place but shocking to those who believe that such prayer is not only "useful" but necessary. There are those who tell us that children should be taught to pray in their homes. Therefore, no need for more! When parents who are godly see to it that their children give God His due before they start out for school, it is well. Yet, even such parents, in the whirl of distractions today, may not emphasize this as they should. And, what of those other parents who do not themselves pray, and never teach their children to recite morning prayers?

Many of generations of a few years back recall with nostalgia the recital of the Lord's Prayer in the schoolroom, with the reading of the exquisite Psalm which begins: "The Lord is my Shepherd. I shall not want." The children who listen could visualize the "green pastures" through which Christ leads His Own, and His promise to see that they do not "want."

"I am the Good Shepherd. I know Mine and Mine know Me!" Long after King David's time, Christ so described Himself.

In the midst of the controversy over prayer in the public schools many honored public servants have voiced their belief that such prayer is not only useful, but necessary. For instance, Senator SALTONSTALL and Senator DIRKSEN among the others. They do not share the shoddy opinions of self-constituted authorities on matters about which they have no authority to speak.

Mr. DIRKSEN. Mr. President, I now get around to the National Council of Churches. It is rather interesting that a full-page ad appeared in this morning's Washington Post. That ad is there because thousands of clergymen contributed to make it possible.

The same ad appeared in the New York Times of this morning.

There was one addition in the New York Times ad, and that was by way of explanation. It says at the top of the article:

Because the New York Times gave a lead story position and almost a whole page to 198 academic experts on China, including a high school teacher and an assistant professor of Library Services, but gave only 6 inches to the following policy of 30,000 clergymen, we are paying for this space to bring the story to the American public.

What does it say? It says:

71.4% American Protestant clergymen polled vote "No"—to the admission of Communist China to the United Nations—to United States diplomatic recognition of Peiping.

93.7% of American Protestant clergymen polled vote "No"—to satisfying Red China's primary condition for joining the United Nations: the expulsion of our ally, Free China.

What do you think about this? I will tell you what it was about. It reads:

On February 22, 1966, the General Board of the National Council of Churches, meeting in St. Louis, adopted a resolution calling for the admission of Communist China to the United Nations and the granting of United States diplomatic recognition to the Peiping regime.

This widely-publicized resolution—and similar statements from other church bodies—has caused dismay in nations throughout the world who stand in firm opposition against Communist aggression and enslavement and who look to the United States as the leader in this crucial world struggle. Particularly tragic is the effect on the morale of young Americans battling Communism in Vietnam. If their own churches and church leaders favor accommodation with totalitarian, atheistic and predatory Communism, should they give their lives in resisting it?

They go on, and they show the rest of the story, but this is the answer to the National Council of Churches, which has pretended to speak on nearly every subject under the sun for an estimated 40 million people. They do not do anything of the kind.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. DIRKSEN. I yield.

Mr. BAYH. Mr. President, I know that I promised not to interrupt the Senator, but since this is such a well-documented testimony of the opinion on the canvass of all of the churches; does one of the questions that is asked concern the position of clergymen on the issue we are now discussing?

Mr. DIRKSEN. No. We will get to that later.

Mr. BAYH. I thank the Senator.

Mr. DIRKSEN. Mr. President, I want to establish the fact that these social engineers have been giving too much time to things like the recognition of China instead of to a little soul saving. We might not have some of the riots in this country if we had prayer in schools and a little more religious tradition. Maybe that is where we split our moorings, and we will lament it, believe me, before we get through.

I have here a copy of Human Events, published April 9, 1966.

I know that people waive this to one side. However, one of my old classmates, a very capable person, from the University of Minnesota, had quite an interesting human event financially and otherwise.

He toured many sections of the globe in order to get information of an accurate character. They have devoted a part of an issue to this question.

Mr. President, the title of this article is—

Does the National Council of Churches speak for you? Claiming to represent 40 million protestant and orthodox church members, the NCC has spoken out on such diverse topics as right-to-work, Medicare, reapportionment and the war in Vietnam. Invariably liberal, its opinions are often used in attempts to refute conservative arguments. Should anyone pay attention to the NCC?

This is a staff report.

Mr. President, one of the most significant parts of the issue is a vestry committee report.

It was one of the most comprehensive reports on the National Council of Churches. It reads:

NCC DOES MORE HARM THAN GOOD

One of the most comprehensive reports on the National Council of Churches was prepared in 1960 and 1961 by the Vestry Committee of St. Mark's Episcopal Church of Shreveport, La., the largest Episcopal church in the state. After a lengthy investigation, the committee unanimously found:

I shall read only two underlined portions, but I ask unanimous consent to have the entire article printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

VESTRY COMMITTEE CONCLUDES—NCC DOES MORE HARM THAN GOOD

One of the most comprehensive reports on the National Council of Churches was prepared in 1960 and 1961 by the Vestry Committee of St. Mark's Episcopal Church of

Shreveport, La., the largest Episcopal church in the state. After a lengthy investigation, the committee unanimously found:

Theoretically, and perhaps practically, the NCC does many things which are good. It conducts foreign missionary work; it distributes food and clothing to many who need it overseas. It prepares and distributes church literature.

But we have not discovered any so-called evangelistic activity of the NCC which is not also a function of the Protestant Episcopal Church. Our church also conducts foreign missionary work and publishes literature.

Our investigation leads us to the following conclusions:

The NCC has done and is doing a great number of things that we feel are not in the best interest of the Church. We have proved beyond a reasonable doubt that it has made a practice of speaking on behalf of all members of the 34 denominations comprising the NCC, when it is in fact not specifically authorized to do so. In this regard, it has been deceitful, in that it actually did desire the impression to be made on the public that it spoke officially for "the 39 million."

The NCC has far exceeded its rightful role in speaking out, as the official voice of Protestantism in America, on such controversial issues as federal aid to education, the right-to-work laws, the ethical considerations of the steel dispute, the seating of Red China in the United Nations, etc.

The NCC, although not Communistic, has been an aid to the Communist conspiracy.

It has been hypocritical in assailing "guilt by association" and "name calling" in one breath and employing it in the next.

It was deceitful in the manner in which it handled the Fifth World Order Study conference in Cleveland. It is deceitful in refusing to repudiate mistakes or to correct misinterpretations in the press, except when such mistakes or misrepresentations are harmful to what they (the professional core of the NCC) believe and profess. We believe that such deceit is not a proper Christian attitude.

The NCC is in fact, if not in theory, dominated by a hard core of professionals, some of whom have never done pastoral work. We believe they may consider themselves leaders of what they would like to consider as a super church. They deliberately destroyed the Lay Committee of the NCC because the NCC could not effectively spread its propaganda with such a loud dissonant voice from within. We are of the opinion that there is something basically wrong with a religious organization which cannot bear to have within its framework a highly responsible group of the laity simply because it disagrees with the dominating clergy.

It is wrong for the NCC to carry out lobbying activities with the federal government at all, and it is particularly erroneous for it to do so as the professed voice of Protestantism.

There are only two choices available in reaching a conclusion in regard to the reading list, "The Negro American," which it published. Either the NCC displayed incompetence in allowing it to be distributed, or else it was distributed deliberately as a corrosive. In all charity we must conclude that it was a display of incompetence, which conclusion strengthens our conviction that the NCC should refrain from taking stands on highly controversial issues in politics and economics: besides not being so authorized, it is not competent to judge upon all of these matters.

The most important point of all is this: far from being the great cohesive power it was intended to be, the NCC by its actions is splitting the churches wide open. We believe that it is doing much more harm than good; that its actions will restrict the attracting of new members to the church; that it will alienate and is now alienating many of the now faithful parishioners; that it is creating disastrous dissension in all Protestant Churches. We know for a fact that it is wreaking such havoc in individual churches that meeting of budgets is being impaired, and that life-long friendships between laity and clergy, and between laity and laity, are being strained.

In summation, we conclude with firm conviction and only after long study and prayer, that the National Council of Churches as it is presently constituted and operated, is a harmful and highly dangerous institution.

Mr. DIRKSEN. Mr. President, the two parts I wish to read are:

We have proved beyond a reasonable doubt that it has made a practice of speaking on behalf of all members of the 34 denominations comprising the NCC, when it is in fact not specifically authorized to do so. In this regard, it has been deceitful, in that it actually did desire the impression to be made on the public that it spoke officially for "the 39 million."

The last lines in the vestry committee report from the church in Shreveport read:

In summation, we conclude with firm conviction and only after long study and prayer, that the National Council of Churches as it is presently constituted and operated, is a harmful and highly dangerous institution.

Yet they come to Washington and make it appear to Congress and to the country that they speak officially for 40 million people, when they do nothing of the kind. So it is high time that their testimony be adequately discounted.

Now I quote from the Episcopalian for September 1966. This article refers to Bishop Walter M. Higley. The title is: "Bishop To Side With the Angels, Senator DIRKSEN."

I am glad the angels are in my corner. The article reads:

Episcopal Bishop Walter M. Higley of Central New York and other leading clergymen of the area have issued statements calling for support of the "Dirksen amendment" to the U.S. Constitution. The main force of Senator DIRKSEN's bill is to permit voluntary prayer in public schools, a practice ruled out as unconstitutional by the U.S. Supreme Court in 1962 and again in 1963, following suits emanating from New York and Maryland.

Approximately half of the U.S. Senate is cosponsoring the Illinois Republican's measure. But even with this support, observers feel that should the measure make the floor, the necessary two-thirds vote of the Senate for its passage would still be difficult to obtain.

Nevertheless, Bishop Higley said: "You can line me up on the side of Senator EVERETT DIRKSEN and the angels. May the habit of saying prayers in the public schools be resumed—and soon. Prayer never hurt anybody yet, and men and women have been praying to a Supreme Being for centuries."

Now I turn to an article entitled "Morehouse on Prayers," published in the Living Church for August 21, 1966. Dr. Morehouse is president of the House of Deputies of the General Convention of the Episcopal Church. The article relates to my proposal to permit voluntary prayers in public schools. It is scarcely necessary for me to read the article into the RECORD; I shall merely ask unanimous consent that it be printed as a part of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MOREHOUSE ON PRAYERS

Following is the text of a letter dated August 3d, sent by Dr. Clifford P. Morehouse, President of the House of Deputies of the General Convention of the Church, to Senator EVERETT M. DIRKSEN of Illinois, regarding the latter's proposal to permit voluntary prayers in public schools:

Although I am writing this letter on my official letterhead as president of the House of Deputies of the Episcopal Church, I want to make it clear at the outset that I am doing so only for the purpose of identification and that the views expressed herein are my own and do not represent any official position of the Episcopal Church or its General Convention.

I am concerned over the report in the *New York Times* about the testimony of certain Church leaders in the first day of hearings on your proposal to permit voluntary prayers in public schools. Specifically, I am concerned with the statement attributed to Dr. David R. Hunter, speaking for the General Board of the National Council of Churches, to the effect that your amendment would be the introduction of "state action and state power into the religious life of citizens where it is neither necessary nor effective."

While the viewpoint expressed by Dr. Hunter may be that of the General Board of the National Council of Churches, it does not necessarily represent the view of the member Churches of the NCC, and I suspect that it by no means represents the opinion of a majority of the lay members of these Churches.

So far as the Episcopal Church is concerned, no official action has been taken at the national level in regard to your proposed amendment, or the subject of voluntary prayers in public schools, with which it deals. There was a position paper prepared in opposition to the former Bricker amendment, but I understand that the particular point of objection there was the compulsory feature of that amendment, which I believe is not true of your proposed amendment. In any case, neither the General Convention of the Episcopal Church nor its executive body, the Executive Council, has taken any official action one way or the other, so far as I am aware.

Speaking for myself, and I am sure that in so doing I am speaking for a great many lay people of all Christian Churches, I should welcome a proper method of permitting prayer and Bible reading in public schools, provided that it did not involve any compulsion or denominational indoctrination.

It seems to me that the desirability of prayer and public worship under public sanction is amply borne out by the provision of a Chaplains' Corps in the Army, Navy, and Air Force; the practice of having an invocation or benediction at public meetings; and the opening of sessions of the Congress itself with public prayer by a publicly-appointed chaplain. If such prayers are permitted and encouraged in the Armed Forces, in public meetings, and in the courts of legislation, by what line of reasoning can they be said to be inappropriate for children and young people, and in a time when they are exposed to a wide-spread breakdown of morals and ethics, the voluntary recognition of a divine power and standard of conduct is highly to be desired.

The Bill of Rights provides that "Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof*." Surely, this should include the free exercise of religion in the public schools as well as in other public places—always provided that it is done without denominational or sectarian overtones which might

constitute it in some sense "an establishment of religion."

If your proposed amendment would accomplish this aim, I am heartily in favor of it, and I am confident that the great majority of the American people would also be for it. We must, of course, protect the rights of minorities; but I believe that the majority also needs to have its rights protected. Insofar as your proposed amendment would help to accomplish this, I am in favor of it, and hope that it will be acted upon favorably by the Congress of the United States.

In conclusion, I must reiterate that I am speaking for myself and for other like-minded individuals, and not officially on behalf of the Episcopal Church or any other religious or secular body.

. . .

This is a correction to the fourth paragraph of my letter of August 3d, in regard to the action (or lack of it) taken by the Episcopal Church at the national level in regard to the matter of prayers in public schools. In that paragraph I stated that "neither the General Convention of the Episcopal Church nor its executive body, the Executive Council, has taken any official action one way or the other, so far as I am aware."

Although I made this statement after checking with reliable sources, I have subsequently found that the Executive Council of the Episcopal Church (formerly known as the National Council) did take such action in a resolution of May 16, 1964. The pertinent part of the resolution read as follows:

Resolved, That the National Council of the Protestant Episcopal Church record its considered opinion that amendments to the Constitution of the United States of America which seek to permit devotional exercises in our public schools should be opposed.

I feel that I must advise you of this action in order to keep the record straight. It does not, of course, affect my personal belief in and supoprt of your proposed amendment.

Mr. DIRKSEN. I think that for good measure I should give a fillip to my old friend Roscoe Drummond, who is a columnist for the Washington Post. He wrote a column entitled "Legislated Prayer," with the subhead, "'Tampering' With First Amendment Opposed by Most Denominations." Roscoe ought to be a little more careful about his facts.

But I like to get some testimony from the other side, so I shall put Roscoe in there with the clerics, and he can explain on his own time, wherever he is, with pen and typewriter, if he likes, because he will get the facts of life sooner or later.

I ask unanimous consent to insert the column in the RECORD.

There being no objection, the column was ordered to be printed in the RECORD, as follows:

LEGISLATED PRAYER—"TAMPERING" WITH FIRST AMENDMENT OPPOSED BY MOST DENOMINATIONS

(By Roscoe Drummond)

One of the most striking facts to emerge from the Judiciary Committee hearings on Senator EVERETT DIRKSEN'S public school prayer amendment is that most religious denominations in the United States are against it.

It seems evident that DIRKSEN'S move to rewrite the Bill of Rights is losing support among those he expected to be its backers—religious leaders.

The main thrust of their argument is that any attempt to amend the First Amendment and to "clarify" the Supreme Court decision banning prescribed prayers or Bible readings in the public schools would lead to confusion and religious conflict.

This is the substance of the testimony of the National Council of Churches, a Roman Catholic law school dean and a Harvard law professor.

On the basis of a Nation-wide survey, the Christian Science Monitor reports that leaders of 11 Protestant denominations and spokesmen for the Jewish faith "strongly disapprove of permitting even voluntary prayers in the public schools."

Important Catholic churchmen strongly favor the Dirksen amendment, but Catholic support of it is not monolithic.

Clergymen advise against the Dirksen amendment on four main grounds:

1. They don't want any "tampering" with the First Amendment by enlisting, even voluntarily, any arm of Government in behalf of the exercise of freedom of religion.

2. These churchmen believe that school officials are not acting in their proper sphere by providing for classroom religious exercises even if they do not decide their content.

3. They contend that in reality there can be no "voluntary" prayers in public school unless there is only silent prayer, and that to adapt or dilute such prayers to the conflicting wishes of differing groups in the community would either be unworkable or make such prayers meaningless.

4. Perhaps most important of all, these clergymen see public school religious exercises as not really conducive to spiritual growth, feel that the home and the church are the sources of spiritual nourishment and point out that no Supreme Court decision prevents any individual "from praying at any time and in any place." No amendment to the Constitution is needed to confer this right.

One Protestant spokesman said he knew of no Protestant denomination which officially favored the Dirksen amendment. Many national leaders of the Catholic Church, including Richard Cardinal Cushing, Archbishop of Boston, do favor it, but several Catholic educators question its value and its appropriateness.

Glenn L. Archer, executive director of the Protestants and Others United for Separation of Church and State, says that most prayer-amendment support comes from "individual campaigns," such as that waged by the Liberty Lobby, a conservative political action group.

These advocates are genuinely desirous of seeing more prayer in the Nation, but Archer replies—and I think rightly—that "the way to get it is not to legislate it. Prayer that is legislated is not prayer at all."

This view is shared by the American Jewish Committee, which believe that "religious training rests with the parent and his church or synagogue, not with the public school."

Mr. DIRKSEN. Mr. President, since colonial days, schools have permitted prayer, and no one for a moment thought a state church or a religion was being established as proscribed by the first amendment. Instead of the pastors and ministers for the common man, we had as witnesses the social engineers of the church, the world savers, those who are constantly advancing anesthesia for every ill and ache of the body politic, not only in this country, but in the whole wide world. The humble ministers and pastors and priests and rabbis had neither time nor money to come to Washington and present their views in behalf of this amendment; only the church hierarchy in the ivory towers of Washington and places close by were heard at the hearing. They have been referred to as the generals without armies. They brought no suggestions for any change in the language in the amendment. Their job was to knock down, not to amend, not to reconstruct; and there was not a suggestion out of any of them except in opposition. They came to oppose and that was it. They are out of touch with the people. They are the sematic theologians who long ago have forgotten the common touch.

Who were the witnesses for the proponents of Senate Joint Resolution 148?

First, a humble rabbi named Judah Glasner from Los Angeles. He is a ministering rabbi. He is identified with a good many causes and groups, but he is more than that. He is one of those who spent agonizing weeks and months in the prison camp at Dachau, and now he is the leader of a congregation in Los Angeles. He knows pain and the power and comfort of prayer. He knows that in totalitarian countries, prayer is interdicted. He quoted William Penn, who once said:

Those people who are not governed by God will be ruled by tyrants.

We also brought before the committee the legislative chairman of the National Americanism Commission of the American Legion. His name is Daniel O'Connor. Without equivocation, he stated that the American Legion, millions strong, were in favor of the amendment, and said that the Supreme Court decision "is not in the interest of promoting the moral and spiritual values of American youth."

There came two young divinity students, representing the International Christian Youth Movement, who presented the names of 4,000 ministers, representing 40 denominations which favored this amendment.

Had I been so disposed, I could have taken the witness stand before the subcommittee and presented not the thousands, or hundreds of thousands, but millions of names from American citizens of all faiths and denominations in all walks of life who have signed petitions, newspaper ballots, and other entreaties to deal with this matter, dispel the confusion, and restore voluntary prayer to the public schools.

One interesting poll was that of Univac which examined 15,620 returns out of 18,996 which had been mailed, and it showed 80.6 percent of those who voted were in favor of the amendment and in favor of voluntary prayer.

I submit the findings of the Gallup poll and, likewise, the Harris poll, which indicate that more than 80 percent of the American people want to see this done.

I submit the resolutions adopted by the Organization of American Mayors, which made a strong plea for restoration of voluntary prayer.

I invited Bertrand Daiker, of New York, the attorney in the Board of Regents Prayer case, who presented the matter to the U.S. Supreme Court and who came out strongly for the prayer amendment.

I also invited Edward Bazarian, a New York attorney, who represented the petitioners in the Stein against Oshinskey case. He made it quite emphatic that

when the Supreme Court of the United States denied the petition for certiorari in the Stein case, the High Court emphatically closed the door on voluntary prayer.

Mr. Clyde W. Taylor, who appeared as general director of the National Association of Evangelicals, representing approximately 30,000 churches, including 41 denominations and individual churches from 13 other denominations in the United States, made one statement in his formal remarks which went to the very nub of the question that is before us and makes it absolutely necessary that Senate Joint Resolution 148 be approved. Mr. Taylor said:

The deleterious effects of this decision have been many and varied. Some are obvious and measurable, but unfortunately, a large number are not. Perhaps the most pronounced is the state of confusion in which so many school administrators find themselves.

That is precisely the case, and that confusion will escalate and grow until it is clarified by the amendatory language embodied in Senate Joint Resolution 148.

To all this I should add from the observations made by Dean Griswold, dean of the Harvard Law School, before the State University of Utah recently.

Mr. President, I shall not quote from Dean Griswold's speech now, but I shall add it to the RECORD because it is one of the most interesting comments that I have encountered in a long time on the cast of mind of a Supreme Court judge. He pays particular attention to Associate Justice Black, who reads his Constitution as an absolute. And so I thought that Dean Griswold's comments were most revealing.

Mr. President, I ask unanimous consent to have printed in the RECORD the comments of Dean Griswold.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

[From the Utah Law Review, Vol. 8, summer, 1963, No. 3]

ABSOLUTE IS IN THE DARK—A DISCUSSION OF THE APPROACH OF THE SUPREME COURT TO CONSTITUTIONAL QUESTIONS†

(By Erwin N. Griswold*)

William Henry Leary was Dean of the School of Law of the University of Utah for thirty-four years, from 1916 to 1950. During this time he strongly influenced the legal education of a large proportion of the lawyers now active at the bar in Utah. It is fitting that this lectureship should be established in his honor. I greatly appreciate the invitation which has been given to me to give this third of the Leary Lectures, though I am conscious of the difficulty which I shall have in meeting the standard already set in the lectures given in earlier year by Justice Roger J. Traynor,[1] and by Justice William J. Brennan, Jr.[2]

† Speech delivered as Third Annual William H. Leary Lecture in Salt Lake City, Utah, on February 27, 1963.

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[1] *Badlands in an Appellate Judge's Realm of Reason*, 7 UTAH L. REV. 157 (1960).

[2] *Federal Habeas Corpus and State Prisoners: An Exercise in Federalism*, 7 UTAH L. REV. 423 (1961).

I

For nearly a century and three-quarters, the Supreme Court of the United States has been a subject of fascination to lawyers, professors of law, political scientists, politicians, and to other citizens of this country. That is as it should be. The Court and its function are central to our system of government, a system which is unavoidably complex because of the size and diversity of our country. It is remarkable indeed that we have, for so numerous and diverse a people, a governmental system which works. The key to this success, I am sure, is the role which the Supreme Court was designed to play and has played in resolving the personal and governmental conflicts which inevitably arise. These conflicts are sometimes of extraordinary difficulty, both intellectual and practical, and it should hardly be surprising that their resolution is not always prompt or clear.

An institution charged with the role which the Supreme Court has successfully filled for so many years is entitled to our respect and understanding. If one criticizes the Court (as people have always done in the past, and should continue to do in the future), it should be essentially for the purpose of trying to contribute to that respect and to that understanding. The debt which we all owe to the Court is far greater than any individual can repay. Criticism of decisions of the Court or opinions of its members should be offered as an effort to repay that debt, and with the thought that conscientious criticism may be an aid to the Court in carrying out its difficult and essential task. It is in that spirit that my remarks this evening are offered for your consideration.

II

A number of years ago I saw in the *Saturday Review* a little item under the heading "Atomic Age Fables." It rather appealed to me and I cut it out. When I was preparing this lecture, I thought of it, and it may, in a way, serve as a text for my remarks. It reads as follows:

"In the land of Absolute, where everyone and everything is perfect, there is no light at night.

"The annals of the Absolutians record that they once discovered the electric light, but as is known, the perfect electric light burns in a perfect vacuum.

"Absolute is in the dark."

As this fable indicates, absolutes are likely to be phantoms, eluding our grasp. Even if we think we have embraced them, they are likely to be misleading. If we start from absolute premises, we may find that we only over-simplify our problems and thus reach unsound results. It may well be that absolutes are the greatest hindrance to sound and useful thought—in law, as in other fields of human knowledge. I would like to suggest, with great respect, and real concern, that the Supreme Court of the United States has, in recent years, been engaged, in certain types of cases, in a species of absolutism in its reasoning, which is more likely to lead us into darkness than to light. Absolutism is an easy and sometimes appealing mode of thought. It provides its own anodyne for the pains of reasoning. It states the result with delusive finality. But it is, I think, a thoroughly unsatisfactory form of judging.

The most extreme form of the absolutist position has been taken by Mr. Justice Black, particularly in certain extrajudicial pronouncements. Thus, in his James Madison Lecture at New York University, on February 17, 1960,[3] he said: "It is my belief that there are 'absolutes' in our Bill of Rights, and that they were put there on purpose by men who knew what words meant and meant their prohibitions to be 'absolutes.'"

And he reiterated this, and extended it in a widely publicized interview at the biennial convention of the American Jewish Congress, on April 14, 1962.[4] In this interview, he dealt specifically with the First Amendment, which you will recall, reads in the following terms: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Justice Black lays great stress on the words "no law" in the opening phrase which says: "Congress shall make no law . . ." In the interview referred to, he said, among other things:

"But when I get down to the really basic reason why I believe that 'no law' means no law, I presume it could come to this, that I took an obligation to support and defend the Constitution as I understand it. And being a rather backward country fellow, I understand it to mean what the words say. . . . It says 'no law,' and that is what I believe it means."[5]

Here we have both absolutism and literalism. Just to make it clear that he would not be misunderstood, he went on to say that laws about libel and slander are invalid. Here are his words: "I have no doubt myself that the provision, as written and adopted, intended that there should be no libel or defamation law in the United States under the United States Government, just absolutely none so far as I am concerned."[6]

And he added: "I have an idea there are some absolutes. I do not think I am far in that respect from the Holy Scriptures."[7]

Professor Kurland has recently suggested that further discussion of this absolutist point of view may amount "to thrashing a straw man."[8] I hope that this is true. But the eminence of those who have taken this position, and the influence which these views have already had in several areas of constitutional law lead me to think that consideration here may be appropriate.

III

Within the past year, a case came before the Supreme Court which directly involved the interpretation and application of the First Amendment. This was the New York

[3] Black, *The Bill of Rights*, 35 N.Y.U.L. REV. 865, 867 (1960).

[4] Cahn, *Justice Black and First Amendment "Absolutes": A Public Interview*, 37 N.Y.U.L. REV. 549 (1962).

[5] *Id.* at 553–54.

[6] *Id.* at 557.

[7] *Id.* at 562.

[8] Book Review, 30 U. CHI. L. REV. 191 (1962), reviewing HOOK, THE PARADOXES OF FREEDOM (1962), which contends against the "absolutist" approach.

There are already many discussions of the absolute approach in print. In this situation, one may be bold to enter into the field, but the importance of the subject may warrant an effort to express another point of view.

Other treatments of the general topic include Frantz, *The First Amendment in the Balance*, 71 YALE L.J. 1424 (1962); Meiklejohn, *The First Amendment is an Absolute*, 1961 SUP. CT. REV. 245; Mendelson, *On the Meaning of the First Amendment: Absolutes in the Balance*, 50 CALIF. L. REV. 821 (1962); LEV., LEGACY OF SUPPRESSION (1960); C. L. BLACK, THE PEOPLE AND THE COURT 96–100 (1960); Reich, *Mr. Justice Black and the living Constitution*, 76 HARV. L. REV. 673 (1963); Kurland, *of Church and State and the Supreme Court*, 29 U. CHI. L. REV. 1 (1961), reprinted in KURLAND, RELIGON AND THE LAW (1962); Fried, *Two Concepts of Interests: Some Reflections on the Supreme Court's Balancing Test*, 76 HARV. L. REV. 755 (1963).

school prayer case decided last June: its name is *Engel* v. *Vitale*.[9] It involved a prayer formulated by the State Board of Regents in New York, and recommended by them for use in the schools of that state. The prayer, in its entirety, was as follows:

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."

As you know, the Court, in an opinion by Mr. Justice Black, held that the reciting of this prayer in the public schools of New York violated the Constitution. It was, the Court held, an "establishment of religion," forbidden by the First Amendment. Of course, Mr. Justice Black did not do this all alone. Five of his colleagues joined with him. Mr. Justice Stewart dissented from the judgment, and two of the then members of the Court (Justices Frankfurter and White) did not participate. Justice Douglas wrote a concurring opinion, in which he made it largely a matter of finance. Though differing some in his reasoning, he, too, showed the absolutist approach. He recounted all of the ways in which governmental bodies now finance some activity with a religious element or overtone: "chaplains in both Houses and in the armed services"; "compulsory chapel at the service academies, and religious services . . . in federal hospitals and prisons"; "religious proclamations" by the President; "'In God We Trust'" on our money; "Bible-reading in the schools of the District of Columbia"; and many other things, including exemption from "the federal income tax" and "postal privileges" for "religious organizations."[10] All of this is bad, according to Justice Douglas. After recognizing that "Our system at the federal and state levels is presently honeycombed with" such things, he said, summarily, and absolutely: "Nevertheless, I think it is an unconstitutional undertaking whatever form it takes."[11] It's as simple as that. They are all bad. And perhaps they are if the absolutist approach to such matters can be accepted as sound. These are the lengths to which absolutism takes us.

But is it all as clear as this? Do words convey such positive and overpowering meaning? Is there no room whatever for thought or consideration? Perhaps it would be worth while just to look carefully at the words of the Constitution. Just what does the First Amendment say? These are the words again, which like all words are not digits in a computer but are "the skin of a living thought":[12]

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

That is the First amendment, in all its majesty. I will not yield to any Justice of the Supreme Court in my respect for those words, or, indeed, in reverence to them and the thought that they express. Nor will I yield in my conception of their importance not merely in our history but in their present function and worth in helping us to preserve a free nation. But what do they say? "Congress shall make no law . . . ." Congress had made no law in the *Engel* case; no law of Congress was in any way involved. Of course we must look to the Fourteenth Amendment. At this point, though, the construction ceases to be a literal one, and becomes, indeed, a rather sophisticated one. What does the Fourteenth Amendment say? Here are its relevant words: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Is there anything there about freedom of religion, or about an establishment of religion? Obviously not. But there is a reference to "liberty," and this has been construed to make effective against the states some of the provisions of the Bill of Rights[13]—though clearly not all of those provisions.[14] As Mr. Justice Black has put it: "My belief is that the First Amendment was made applicable to the states by the Fourteenth."[15] That may be; and within some limits, applied with proper care and restraint and understanding, I rather like the result. But it takes some rather broad construing. It cannot conceivably be regarded as required by the literal language of the First and Fourteenth Amendments. It is truly a far cry from saying with sweet simplicity that "'no law' means no law."

But let us go on. What is it that Congress can make no law about? It is "an establishment of religion." What does that term mean? That takes some construing, too. Certainly there was much history behind the phrase. Not only did England (and Scotland) have an established church, but there were established churches in a number of the states at the time the First Amendment was adopted.[16] And they were something very different from a Regents' recommended prayer. It takes a measure of construction to bring this prayer within the no-establishment clause. "No law" may well mean no law. But "establishment of religion" might mean establishment of religion; and those who wrote the "establishment of religion" clause might be rather perplexed by the use which has been made of it in 1962. To say that this is an absolute is, I venture to say, to allow oneself to be deceived by the absolutist approach, and to deny oneself the opportunity to appreciate just what one is doing when the meaning one wants to put upon the words is first put into them, and then taken out with all the aura of the absolute approach. "No law" means no law. It is as simple as that—that is, if one ignores the other words which are involved in the task, such as "Congress," "establishment of religion," "the free exercise thereof," and "deprive any person of life, liberty, or property without due process of law." Of course, I do not say that these are meaningless words. I do suggest that they are words which require construction, which are by no means absolute in form or content, and that to ignore them under the guise of the absolutist approach is to fail to recognize and perform the most significant and fundamental part of the task of judging.[17]

One need hardly say here that a considerable portion of the history of this state involved a controversy over a question which many persons sincerely believed to be a matter of religion, I refer, of course, to the issue of polygamy. Congress did pass a law forbidding polygamy in the Territories, and in *Reynolds* v. *United States*[18] this was held constitutional. Similarly, in the statute admitting Utah to statehood, Congress legislated again on this subject,[19] and this has never been challenged. This example, and others that could be given, are enough, I think, to show that the words of the First Amendment, in its several clauses, require interpretation in their application to widely differing situations, and cannot be given sound meaning and effect merely through a mechanically absolutist approach.[20]

There has perhaps been some unfortunate use of nomenclature in dealing with this problem. The approach espoused by Justice Black, and followed by him and some of his colleagues, has, understandably enough, been called the "absolutist" approach. The other approach has been called the "balancing" approach, because it is thought to involve the balancing of various competing claims to the judge's attention. Both of these appelations may well be misleading.

The Black approach might better be called the "Fundamentalist theological" approach. A hint of this is given in Justice Black's reference, which I have already quoted, to "the Holy Scriptures." If one thinks of the Constitution as a God-given text stating fixed law for all time, and then focuses on a single passage, or, indeed, on two words—"no law"—without recognizing all the other words in the whole document, and its relation to the society outside the document, one can find the answers very simply. "'No law' means no law." No more thought is required. Earlier this month, I was in New Orleans, and saw a large illuminated sign outside a church there which read: "God said it. We believe it. That's all there is to it." This seems a similar approach.

On the other hand, "balancing" may be a misnomer, too, as a description of the method followed by those who do not accept what I have just called the Fundamentalist approach. The "balancing" label makes the approach which Justice Black does not like more vulnerable to verbal attack than it merits, and the Justice has not failed to take advantage of this.[21]

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[9] 370 U.S. 421 (1962).

[10] *Id.* at 437 n.1.

[11] *Id.* at 437.

[12] Holmes J., in Towne v. Eisner, 245 U.S. 418, 425 (1918).

[13] See Cantwell v. Connecticut, 310 U.S. 296 (1940); Schneider v. State, 308 U.S. 147, 160 (1939); going back to Gitlow v. New York, 268 U.S. 652 (1925).

[14] Twining v. New Jersey, 211 U.S. 78 (1908); Palko v. Connecticut, 302 U.S. 319 (1937); Adamson v. California, 332 U.S. 46 (1947).

[15] Cahn, *supra* note 4, at 558.

[16] It is said that in a number of New England towns the formal record title of the local Congregational Church has never been changed, and is still vested in the town, as it was in Colonial times, and when the Constitution was adopted.

[17] For Justice Black, too, his announced code of judicial philosophy has not proved to be a workable rule of judicial action. . . . In many memorable votes and opinions, [Justice Black] has in fact followed the course indicated as inevitable by Justice Holmes' comment on the necessity for judicial choice." ROSTOW, THE SOVEREIGN PREROGATIVE xvii (1962).

[18] 98 U.S. 145 (1878).

[19] Act of July 16, 1894, c. 138, sec. 3 (First), 28 Stat. 107, 108.

[20] Professor Kurland has suggested that cases decided under the religion clauses of the First Amendment are not a sound test of the absolutist argument, since there are two clauses in the religious portion of the Amendment (the "establishment" clause, and the "free exercise" clause) which must obviously be read together, or "balanced."

Thus, it is said, the Court could not have decided other than it did in the Reynolds case without having "established" a particular religious group in Utah. The argument is somewhat subtle, and has not been recognized by the absolutists. On the whole, it seems to emphasize that what is required here is a reading of the whole Constitution, in the light of its setting, purpose, and effective operation, in other words, the important, difficult and inescapable process of interpretation.

Compare White v. United States, 305 U.S. 281, 292 (1938), where in answer to the contention that taxing statutes must be construed in favor of the taxpayer—an essentially absolutist position—Mr. Justice Stone said: "We are not impressed by the argument that, as the question here decided is doubtful, all doubts should be resolved in favor of the taxpayer. It is the function and duty of courts to resolve doubts."

[21] The majority's approach makes the First Amendment, not the rigid protection of liberty its language imports, but a poor flexible imitation." Black, J., dissenting, in Braden

Rather than "balancing," the approach which appears to me to be sound might better be called the "comprehensive" or "integral" approach, since it involves looking to the text of all of the Constitution, and, indeed, in proper cases, to the "unwritten Constitution" [22] examining and considering fully all relevant texts and conditions of our constitutional system, and integrating all together in reaching the ultimate solution. Instead of focusing on a few words, and ignoring all else, including the effect and meaning of those words, as distinguished from their apparent impact when isolated from everything else, as the absolutist or "Fundamentalist" approach does, the comprehensive or integral approach accepts the task of the judge as one which involves the effect of all the provisions of the Constitution not merely in a narrow literal sense, but in a living, organic sense, including the elaborate and complex governmental structure which the Constitution, through its words, has erected. Under the Fundamentalist approach, the judge puts on blinders. He looks at one phrase only; he blinds himself to everything else. Can this approach really be preferable or sounder than one under which the Court examines all Constitutional provisions in a living setting, and reaches its conclusion in the light of all the relevant languages and factors? Of course, this comprehensive approach requires strong and able judges. Let us hope that we may continue to have such judges. Without judges of high ability, great character, and staunch courage, our constitutional system will surely suffer under any approach to Constitutional questions. As Professor Hamilton has said: "that Marshall was *there* and Taney and Cardozo—and not others—has shaped the very fabric of the Constitution." [23] And this may surely be said of Justice Black.

IV

Let me now turn to another aspect of the matter. I venture the thought, quite seriously, that it was unfortunate that the question involved in the *Engel* case was ever thought of as a matter for judicial decision, that it was unfortunate that the Court decided the case, one way or the other, and that this unhappy situation resulted solely from the absolutist position which the Court has taken and intimated in such matters, thus inviting such litigation in its extreme form.

What do I mean by this? I have in mind at least two separate lines of thought. One is the fact that we have a tradition, a spiritual and cultural tradition, of which we ought not to be deprived by judges carrying into effect the logical implications of absolutist notions not expressed in the Constitution itself, and surely never contemplated by those who put the Constitutional provisions into effect. The other is that there are some matters which are essentially local in nature, important matters, but nonetheless matters to be worked out by the people themselves in their own communities, when no basic rights of others are impaired. It was said long ago that every question in this country tends to become a legal question.[24] But is that wise? Is it inevitable? Are there not questions of detail, questions of give and take, questions at the fringe, which are better left to nonjudicial determination?

First, as to the long tradition. Is it not clear as a matter of historical fact that this was a Christian nation? Of the immigrants who came to previously British North America by the time of the adoption of the Constitution, virtually all were Christian, in all the degrees and types of persuasion which come within that term. Are the Mayflower Compact, Ann Hutchison,, Cotton Mather, Jonathan Edwards, and William Penn, and many others, no part of our history? It is true that we were a rather remarkable Christian nation, having, for various historical and philosophical reasons, developed a tolerance in matters of religion which was at once virtually unique and a tribute to the men of the seventeenth and eighteenth centuries who developed the type of thought which came to prevail here. But this was not a purely humanistic type of thought. Nor did it deny the importance and significance of religion.

It is perfectly true, and highly salutary, that the First Amendment forbade Congress to pass any law "respecting an establishment of religion or prohibiting the free exercise thereof." These are great provisions, of great sweep and basic importance. But to say that they require that all trace of religion be kept out of any sort of public activity is sheer invention. Our history is full of these traces: chaplains in Congress and in the armed forces; chapels in prisons; "In God We Trust" on our money, to mention only a few. God is referred to in our national anthem, and in "America," and many others of what may be called our national songs. Must all of these things be rigorously extirpated in order to satisfy a constitutional absolutism? What about Sunday? What about Christmas? Must we deny our whole heritage, our culture, the things of spirit and soul which have sustained us in the past and helped to bind us together in times of good and bad?

Does our deep-seated tolerance of all religions—or, to the same extent, of no religion—require that we give up all religious observance in public activities? Why should it? It certainly never occurred to the Founders that it would. It is hardly likely that it was entirely accidental that these questions did not even come before the Court in the first hundred and fifty years of our constitutional history. I do not believe that the contentions now made would occur to any man who could free himself from an absolute approach to the problem.

V

Jefferson is often cited as the author of views leading to the absolutist approach. His "wall of separation" is the shibboleth of those who feel that all traces of religion must be barred from any part of public activity. This phrase comes from Jefferson's reply to the Danbury Baptist Association, dated January 1, 1802.[25] It is clear that he wrote it deliberately, and with planned effect, as, before issuing it, he sent it to the Attorney General for comment with a note saying that he thought of answers to such addresses as "the occasion . . . of sowing useful truths and principles among the people which might germinate and become rooted among their political tenets." What Jefferson wrote was a powerful way of summarizing the effect of the First Amendment. But it was clearly neither a complete statement nor a substitute for the words of the Amendment itself. Moreover, the absolute effect which some have sought to give to these words is belied by Jefferson's own subsequent actions and writings.

This matter has been thoroughly investigated by a number of writers. The most recent, and perhaps the most dispassionate of these, is Robert M. Healey, whose book, entitled "Jefferson on Religion in Public Education," was published in 1962. Professor Healey shows that Jefferson denied "that the government was without religion." On the contrary, he contemplated that "those areas of religion on which all sects agreed were certainly to be included within the framework of public education." And he continues, "Jefferson was indeed against government support of any kind for any one or more churches," but "it is not true that he was against support of religion in general or against any form of religion in public education." [26]

These seeking of motives in such cases is dangerous and fraught with difficulties, especially when the motives are likely not to be clearly appreciated by the authors of statements or opinions, or by commentators. On this, Professor Healey may shed some light. He says: "Jefferson's attempts to relate religion to public education reflected his belief that his own religious persuasion was not only right but neutral, and therefore a constitutionally acceptable basis for developing moral adults and fostering religious freedom." And he adds that Jefferson's actions "reveal an unconscious but powerful drive to put his own religious beliefs in a position of unusual strength. . . . That his efforts to foster religious freedom in public education might result in the virtual establishment of his own beliefs . . . undoubtedly never occurred to him in any convincing fashion." [27] Might the same words be applicable to our present advocates of absolutism?

Similarly, though Catholic reaction to the *Engel* decision has been varied, it may be that some of it is motivated by the thought that if public education can be completely secularized (so that, as it has been said, "religion" in such quarters becomes "a dirty word"), then there will be an increased public demand for sectarian education which can combine religion with general education. This could then be an argument in favor of parochial schools, and as the public schools decline, the argument for public support of parochial schools can be advanced in one guise or another. Thus, as so often happens, the absolutist approach may be its own worst enemy, and may result in a situation which will in effect destroy public education, and thus go far to defeat the very results the absolutists want to achieve.

VI

Now let me turn to the other point—that there are some matters which should be settled on the local level, in each community, and should not become great Supreme Court cases. This can be presented on an essentially legal level, in terms of "standing to sue," and this has been thoughtfully developed by my colleague, Professor Sutherland.[28] What I have in mind is not really different, but I would like to consider it in less technical terms.

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v. United States, 365 U.S. 431, 445 (1961); in dissenting in Communist Party 1, Subversive Activities Control Board, 367 U.S. 1, 164 (1961), Justice Black said that history shows that "the dangerous constitutional doctrine of 'balancing' . . . has been the excuse of practically every repressive measure that Government has ever seen fit to adopt." See also Frantz, The First Amendment in the Balance, 71 YALE L. J. 1424 (1962).

[22] Hamilton, *Preview of a Justice*, 48 YALE L. J. 819, 825, n. 78 (1939).

[23] Id. at 821.

[24] "It is plainly true that we put upon the Supreme Court the burden of deciding cases which would never come before the judicial branch in any other country." Solicitor General Cox, "Understanding the Supreme Court," 7, being the Louis Caplan Lecture in Law, at the University of Pittsburgh, delivered September 26, 1962. The Solicitor General did not address himself to the question how far the Court itself is responsible for the scope of the questions which come before it for decision.

[25] The full text appears in 16 WRITINGS OF THOMAS JEFFERSON 281–82 (Lipscomb and Bergh, eds. 1903).

[26] HEALEY, JEFFERSON ON RELIGION IN PUBLIC EDUCATION, 208, 256 (1962).

[27] *Id.* at 252–53.

[28] Sutherland, *Establishment According to Engel*, 76 HARV. L. REV. 25 (1962). See also Jaffe, *Standing to Secure Judicial Review*, 74 HARV. L. REV. 1265 (1961), 75 HARV. L. Rev. 255 (1962).

The prayer involved in the *Engel* case was not compulsory. As the Supreme Court itself recited, no pupil was compelled "to join in the prayer over his or his parents' objection." [29] This, to me, is crucial. If any student was compelled to join against his conviction, this would present a serious and justifiable question, akin to that presented in the flag salute case.[30] The Supreme Court did not give sufficient weight to this fact, in my opinion, and relied heavily on such things as the history of the Book of Common Prayer, which, under various Acts of Parliament, was compulsory on all.

Where there is no compulsion, what happens if these matters are left to the determination of each community? In New York, under the action of the Regents, this determination was made by the elected authorities of the School District. It was, indeed, a fact that a large number of the School Districts in New York did not adopt the so-called Regents' prayer. This may have been because they could not agree to do so, or because the situation in particular school districts was such that all or a majority did agree that they did not want to have such a prayer or that it was better to proceed without a prayer. Where such a decision was reached, there can surely be no constitutional objection on the ground that it was a decision locally arrived at, or that it amounts to an "establishment" of "no religion." But, suppose that in a particular school district, as in New Hyde Park, it was determined that the prayer should be used as a part of the opening exercises of the school day. Remember that it is not compulsory. No pupil is compelled to participate. Must all refrain because one does not wish to join? This would suggest that no school can have a Pledge of Allegiance to the Flag if any student does not wish to join. I heartily agree with the decision in the *Barnette* case [31] that no student can be compelled to join in a flag salute against his religious scruples. But it is a far cry from that decision to say that no School District can have a flag salute for those who want to participate if there is any student who does not wish to join.

This is a country of religious toleration. That is a great consequence of our history embodied in the First Amendment. But does religious toleration mean religious sterility? I wonder why it should be thought that it does. This, I venture to say again, has been, and is, a Christian country, in origin, history, tradition and culture. It was out of Christian doctrine and ethics, I think it can be said, that it developed its notion of toleration. No one in this country can be required to have any particular form of religious belief; and no one can suffer legal discrimination because he has or does not have any particular religious belief. But does the fact that we have officially adopted toleration as our standard mean that we must give up our history and our tradition? The Moslem who comes here may worship as he pleases, and may hold public office without discrimination. That is as it should be. But why should it follow that he can require others to give up their Christian tradition merely because he is a tolerated and welcomed member of the community?

Though we have a considerable common cultural heritage, there have always been minority groups in our country. This, I am sure, has been healthy and educational for all concerned. We have surely gained from having a less homogeneous population. Of course, the rights of all, especially those of minorities, must be protected and preserved. But does that require that the majority, where there is such a majority, must give up its cultural heritage and tradition? Why?

[29] Engel v. Vitale, 370 U.S. 421, 423 (1962).

[30] West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624 (1943).

[31] *Ibid.*

Let us consider the Jewish child, or the Catholic child, or the nonbeliever, or the Congregationalist, or the Quaker. He, either alone, or with a few or many others of his views, attends a public school, whose School District, by local action, has prescribed the Regents' prayer. When the prayer is recited, if this child or his parents feel that he cannot participate, he may stand or sit, in respectful attention, while the other children take part in the ceremony. Or he may leave the room. It is said that this is bad, because it sets him apart from other children. It is even said that there is an element of compulsion in this—what the Supreme Court has called an "indirect coercive pressure upon religious minorities to conform." [32] But is this the way it should be looked at? The child of a nonconforming or minority group is, to be sure, different in his beliefs. That is what it means to be a member of a minority. Is it not desirable, and educational, for him to learn and observe this, in the atmosphere of the school—not so much that he is different, as that other children are different from him? And is it not desirable that, at the same time, he experiences and learns the fact that his difference is tolerated and accepted? No compulsion is put upon him. He need not participate. But he, too, has the opportunity to be tolerant. He allows the majority of the group to follow their own tradition, perhaps coming to understand and to respect what they feel is significant to them.

Is this not a useful and valuable and educational and, indeed, a spiritual experience for the children of what I have called the majority group? They experience the values of their own culture; but they also see that there are others who do not accept those values, and that they are wholly tolerated in their nonacceptance. "Learning tolerance for other persons, no matter how different, and respect for their beliefs, may be an important part of American education, and wholly consistent with the First Amendment." [33] I hazard the thought that no one would think otherwise were it not for parents who take an absolutist approach to the problem, perhaps encouraged by the absolutist expressions of Justices of the Supreme Court, on and off the bench.

VII

It is appropriate here to say something about the problem of the Sunday Law cases.[34] Because of the absolutist approach, these cases were very hard for the Court, when I think they should have been quite easy—as is evidenced, I believe, by the fact that no such question was ever raised for a hundred and fifty years after the adoption of the First Amendment. It is true that many of the state statues were a hodgepodge, full of inconsistencies and contradictions. It is true that the Massachusetts statute, going way back to early Colonial days, was entitled: "An Act for the Observance of the Lord's Day." Why should that be important? By an Amendment adopted in 1962, it is now "An Act for the Observance of a Common Day of Rest." Is that really any better? It is perfectly plain that the observance of Sunday has religious roots and origins. This is equally plain as to the observance of Christmas and Thanksgiving. Is that bad? Are these things not all part of our history, our culture, our heritage, our tradition? Must we give them all up because of a newly found absolutist approach to a problem which cannot possibly be resolved wisely in absolutist terms?

The problem may be illustrated by a recent dissenting opinion of Mr. Justice Douglas, in another Sunday Law case, where he wrote: [35] "By what authority can government compel one person not to work on Sunday because the majority of the populace deem Sunday to be holy day? Moslems may some day control a state legislature. Could they make criminal the opening of a shop on Friday? Would not we Christians firmly believe, if that came to pass, that government had no authority to make us bow to the scruples of the Moslem majority?"

The question is a fair one, but I believe that the Justice implies a wrong answer. If I live in a state with a Moslem majority, and it passes such a law—not compelling me to *do* anything, I ask you to note, but only to refrain from work on a certain day—I would think that the law was appropriate and one which I should obey. Not long ago, I was in Tunisia, a country in which the overwhelming majority of the people are Moslem. While there, I expected to comply with their laws and customs. They are a tolerant people, and did not seek to compel me to participate in any of their religious observances. But it would have seemed most inappropriate to me to have taken advantage of their tolerance and to have sought to interfere with their customs simply because they were not mine. While they knelt and prayed in the street at the muezzin's call, I stood respectfully by—with a tourist's interest, no doubt, but also taking advantage of the opportunity to do some thinking of my own. It was quite clear to me that I did not feel religiously oppressed merely because my own freedom of action was slightly interfered with in order that they might have theirs.

A day of rest is very deeply seated in all societies. Generally, as in our culture, it has an origin which is at least partially religious. But it has a wider basis than that. It is also one of those things which is rather good in itself—even the Russians have a common day of rest, and after some experimentation, they have settled one day in seven. And it is a thing, good in itself, which loses much of its good unless it is observed by all on the same basis. If a majority of the people want to observe Sunday as a day on which ordinary work is not performed, even though there may be some religious motivation in picking that day, I find it hard to see that there is anything wrong or oppressive in making that law applicable to all members of the community—as long as the persons who do not care to observe Sunday themselves are not *compelled to do* anything.

Cannot much the same thing be said for Thanksgiving and Christmas, and Christmas carols in the schools, and simple, thoughtfully chosen Bible readings, and Christmas decorations in public places, and all the many other things which are a happy part of the culture and tradition of a large portion of our society? In Boston, where I live, the Christmas display on the Common is far too brash and gaudy for my taste. Some of my friends irreverently call it the Christorama. It is on public ground, and I assume that it is provided at public expense. But I should think it sheer arrogance on my part to object to it, either on grounds of taste or of expense, as long as it is clear that a large part of my

[32] Engel v. Vitale, 370 U.S. 421, 431 (1962).

[33] "Acquainting the student with religious pluralism is part of democratic public education's duty to introduce future citizens to pluralism of all types: economic, political, ethnic, racial and others. Schooling should enable the student to face the actualities of free society. If instead it gives him only silly, sentimental notions concerning the unity of all Americans he will be an incompetent citizen." HEALEY, JEFFERSON ON RELIGION IN PUBLIC EDUCATION 270 (1962).

[34] McGowan v. Maryland, 366 U.S. 420 (1961); Two Guys from Harrison-Allentown, Inc. v. McGinley, 366 U.S. 582 (1961); Braunfeld v. Brown, 366 U.S. 599 (1961); Gallagher v. Crown Kosher Super Market, 366 U.S. 617 (1961).

[35] Arlan's Dep't Store, Inc. v. Kentucky, 371 U.S. 218, 219 (1962).

fellow citizens get joy and pleasure and satisfaction from it.

In a country which has a great tradition of tolerance, is it not important that minorities, who have benefited so greatly from that tolerance, should be tolerant, too, as long as they are not compelled to take affirmative action themselves, and nothing is done which they cannot wait out, or pass respectfully by, without their own personal participation, if they do not want to give it? Is it not a travesty that we have brought ourselves, through an essentially thought-denying absolutist approach, to the point where such things as chaplains in our prisons, or chapels in our military academies, can be seriously and solemnly raised as threats to the religious freedom which is guaranteed by the First Amendment—as made applicable to the States, in very general terms, by the Fourteenth Amendment? In saying this, I am fully mindful of the rights of those who have or profess no religion, and who are surely entitled to the same respect as any one else—and should themselves give the same respectful regard to the rights of other citizens, accepting reasonable arrangements made in this area by the majority, with no compulsion on them to participate.

VIII

The Court, of course, is not without its supporters on this matter. To me it is disappointing that so fine a legal scholar as Edmond Cahn has accepted and embraced, this view in what seem to be extravagant terms. In a recent address he calls the views I am trying to express "the 'ink-eradicator' philosophy." The "immediate objective" of this approach, he says, is "to erase the words of the First Amendment from the parchment of our Bill of Rights." [36] Of course this nonsense, and does not, I feel, with great respect, measure up to what we should expect from Professor Cahn. As I have said, I will not yield to any one in my belief in and reverence for the First Amendment. Nevertheless, accepting it in full, it still has to be construed and applied, with intelligence and judgment, to concrete cases. Professor Cahn chooses to ignore this, although it is the essence of Government under Law. Professor Cahn says: "We protest that the guarantees of the Bill of Rights are still meaningful, still worth the struggles, sacrifices and martyrdoms our ancestors underwent for them." [37] Of course we all agree. But does that advance consideration of the problem? We still have to determine the meaning of the Bill of Rights, and it application to actual, practical, human cases. This process is not helped by an absolutist or Fundamentalist approach which refuses to consider all factors which are relevant in the situation before the Court.

If any further proof were needed, Mr. Justice Black's assertion that the First Amendment makes libel laws unconstitutional would seem to be sufficient. As President Robert K. Carr has said: "Of what value is free speech to a man to whom others have ceased to listen because of a malicious blackening of his name? Is it quite so easy to conclude, as Justice Black does, that one man's freedom of speech must always take precedence over another man's right to protect his reputation? [38]

IX

When I planned this paper, I had expected to deal with a number of other areas in which it seems to me that an absolutist brand of thinking has led the Court to some conclusions which may yet be found to be erroneous. Having got myself so much involved in the problems of prayers and religion, I can do no more than suggest the other matters that I had in mind. Three illustrations will suffice to show that the problem of the absolute approach is not limited to the area of religion. The first two of these show, I think, the influence of an absolutist approach to the free speech clause of the First Amendment, while the third deals with what I would regard as a creeping absolutism as to the provisions of the Constitution relating to jury trial.

1. The first topic to which I allude is the question of the power of courts to deal with publications as in contempt of court, when the publications have occurred outside the courtroom. It is well known, of course, that the British courts exercise these powers quite widely, and that publications with respect to pending criminal cases are sharply restricted there. Here we have to reconcile the freedom of the press provisions of the First Amendment with the right to a fair trial which is implicit in the provisions of the Fifth and Sixth Amendments. The Supreme Court, however, focusing solely on the First Amendment, and applying what appears to me to be an absolutist approach, has held that publications outside the courtroom cannot be punished as contempt.[39] This has been carried to bizarre lengths, in my view, and the result has been seriously to impair the right to obtain a fair trial in this country in many cases.[40]

2. The Court has understandably had its difficulties in the area of obscene publications. The task of determining the line between permissible publication and those beyond the pale can be largely avoided if one focuses only on a dryly literal interpretation of the "free press" clause of the First Amendment. This approach has been urged by Justices Black and Douglas in a dissenting opinion in a recent decision.[41] It is hard to believe that such a result was contemplated by the framers of the First Amendment. It is very hard indeed to find it in the language used in the Amendment, which surely requires elucidation. Again, I do not yield in my regard for any part of the First Amendment. It still seems to me that it requires careful, thoughtful, vital, and not merely mechanical interpretation.

3. The other illustration I would give is in the area of jury trial. Here, too, in recent years, the Court has taken what seems to me to be an absolutist approach. It is true that the Constitution guarantees trial by jury in civil cases. But it is still necessary to interpret what was meant by trial by jury. At common law, and as understood when the Sixth Amendment was adopted, this clearly meant trial by jury under the guidance and instruction of the judge, and the Supreme Court has reaffirmed this view in modern times.[42] But the present Supreme Court goes to great lengths to uphold jury verdicts, and virtually eliminates the superintending power of the judge. This new approach of the Supreme Court, applied in the employers' liability and Jones Act cases, and elsewhere,[43] is not, I believe, sound historically, and is not required by a proper construction of the Constitutional provision. It is instead, as I see it, the consequence of an absolutist view which—as it says "no law" means "no law"—says that "trial by jury" means "trial by jury," without giving consideration or weight to the proper construction and application of that term.

Obviously, my treatment of these questions is inadequate. I mean only to suggest that the absolutist approach has made its way through much of our constitutional law. This is, to me, a serious matter. The absolutist approach involves, I submit, a failure to exercise the responsibilities—and indeed the pains—of judging. By ignoring factors relevant to sound decision, it inevitably leads to wrong results.

The taking of extreme positions leads too often to what may be in part self-inflicted wounds, which the Court can ill afford to endure when its task is so difficult at its best. The three dangerous Constitutional amendments recently proposed by the Council of State Governments may be cited as examples.[44] Though the force behind these are clearly diverse and mixed, the influence of absolutist doctrines in the Court should not be overlooked in their evaluation.

This is an area in which, as Professor Kurland has said, the questions are "too frequently ignored by the intellect and resolved by emotion." [45] It is, too, an area in which we are in constant need of light. That light can be provided by painstaking professional and judicial work which seeks to identify and appropriately to evaluate all of the relevant factors in the many difficult problems that come before the Court. Beyond that comes the extraordinarily hard task of judging in the light of all these factors. Under the absolute approach, no light is needed. We look to one text only. There it is: "no law" means "no law." Is this not a delusive way to certainty? On this basis, reason is abandoned. We can be fairly sure that, down that road, "Absolute is in the dark."

Mr. DIRKSEN. Mr. President, let me give some general observations. George Washington was inaugurated as our first President on April 30, 1789. Five months later the first amendment in the Bill of Rights was approved. On the same day that it was approved, Congress passed a joint resolution calling for a joint commission to wait on the President and request him to proclaim a day of prayer and thanksgiving. If and when such days are proposed now, shall we be confronted with this problem which is growing apace and discover that such a resolution would come under attack in the High Court?

Charles E. Rice, associate professor of law at Fordham University, and author of the book "The Supreme Court and Public Prayer, the Need for Restraint," in a chapter entitled "Solution

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[36] Cahn, *The Parchment Barriers*, 32 AM. SCHOLAR 21, 36, 37 (1962).

[37] *Id.* at 38.

[38] Carr, *Those Wise Restraints which Make Men Free*, in Jones (ed.), THE CONSTITUTION OF THE UNITED STATES, 1787–1962 (University of Pittsburgh, 1962) 29, 44; also in 58 OBERLIN ALUMNI MAGAZINE 4, 7 (November, 1962).

[39] Nye v. United States, 313 U.S. 33 (1941); Times-Mirror Co. v. California, 314 U.S. 252 (1941); Pennekamp v. Florida, 328 U.S. 331 (1946); Craig v. Harney, 331 U.S. 367 (1947). See Donnelly and Goldfarb, *Contempt by Publication in the United States*, 24 MODERN L. REV. 239 (1961); Goldfarb, *The Constitution and Contempt of Court*, 61 MICH. L. REV. 283 (1962).

[40] Maryland v. Baltimore Radio Show, Inc., 338 U.S. 912 (1950).

[41] Roth v. United States, 354 U.S. 476, 508 (1957). "The First Amendment, its prohibition in terms absolute, was designed to preclude courts as well as legislatures from weighing the values of speech against silence." Douglas, J., dissenting, *Id.* at 514.

[42] Herron v. Southern Pacific Co., 283 U.S. 91, 95 (1931), in which Hughes, C. J., cited and relied on Capital Traction Co. v. Hof, 174 U.S. 1, 13, 14 (1899).

[43] See, for example, the rather sweeping statements of Justices Black and Douglas, dissenting from the recent order of the Court amending the Rules of Civil Procedure, January 21, 1963. — U.S. —.

[44] See *Amending the Constitution to Strengthen the States in the Federal System*, 36 STATE GOVERNMENT 10 (1963).

[45] Kurland, Book Review, 30 U. CHI. L. REV. 191, 197 (1962).

by Legislation" deals specifically with the question of a constitutional amendment providing that nothing in the Constitution shall prohibit voluntary prayer in public places. In treating such constitutional amendments one must recognize the importance of protecting the nonbeliever's right to dissent but at the same time the nonbeliever or the doubter shall have no right to impose his nonbelief on the great majority of Americans.

Only an amendment will solve the escalating confusion which will grow as time goes on.

Let us examine the resulting confusion referred to in the light of the Engel case and the Oshinsky case where certiorari was denied and the Court closed the door on voluntary prayer, everyone in authority now interprets the findings of the Court according to his own likes.

In Denver, Colo., seeking to comply with the Court decision became a ludicrous performance and no Nativity scenes were allowed in the schools, no reference to the Christmas story could be made, and only official singing groups like the school chorus could use the Christmas carols.

Strange business in the schools. What are we coming to? This is all a part of the pattern. Taking prayer out of the schools is part of the pattern, and they do not sleep, they do not rest, they do not tarry in their efforts. They mean business, while we are just a little asleep.

Grace said together before meals has been outlawed in some public schools, according to Mr. Clyde W. Taylor, of the National Association of Evangelicals, who appeared before the committee.

In the State of Minnesota they dispensed with all baccalaureate sermons which for so many decades seemed to be an intrinsic part of graduation. They were ordered to be suspended in all State schools in the State.

Is there any taint in a baccalaureate sermon? What, in the name of heaven, are they afraid of? But it is part of the pattern.

The Hicksville, N.Y., Board of Education by resolution adopted the last stanza of "The Star-Spangled Banner" as a prayer as part of its morning opening exercises. In that stanza occur the words:

> Blessed with victory and peace,
> May the Heaven-rescued land,
> Praise the power that hath made
> and preserved us a Nation!
> Then conquer we must,
> When our cause it is just,
> And this be our motto:
> "In God is our Trust!"

This was adopted because of a footnote in the Engle case to the majority opinion to the effect that schoolchildren were to be encouraged to express love for country, but the New York Commissioner of Education ruled that the action was illegal "in the designation of words of the national anthem for use as an official prayer."

Can you imagine that? When they attempted to use the last stanza of "The Star-Spangled Banner," our national anthem, as an opening exercise, and perhaps in a prayerful posture, the commissioner of education of the State of New York said "No."

The board of education in Levittown, N.Y., adopted a program suggesting alternative openings for schoolday, including the song:

> Our Father's God to thee,
> Author of liberty,
> To Thee we sing.
> Long may our land be bright,
> With freedom's holy light,
> Protect us by Thy might,
> Great God, our King.

The commissioner of education for New York held that while these words were not designated as a prayer, the words themselves were "prayerful" and therefore fell within the Engle ban.

That is great business, is it not? This song, so dear to the hearts of children.

The American Legion distributed a half million cards to the children of Legionnaires in the belief that if a prayer was not officially composed it could be used on a voluntary basis, but a public official asserted at once that it made no difference who composed the prayer.

A veterans' organization has been urging that enlistees cease taking an oath reading, "So help me God."

The general counsel to a corporation has issued an opinion to the effect that, in his judgment, "silent meditation" is barred under the decision.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. DIRKSEN. I yield.

Mr. BAYH. Would the Senator please repeat the name of the individual who made that assessment?

Mr. DIRKSEN. Does the Senator mean the general counsel?

Mr. BAYH. Yes. That is the first time I have heard anyone say that.

Mr. DIRKSEN. And it was the first time that I had heard it. We shall supply the name for the RECORD.

In various parts of the country, teachers are now asserting the right to eliminate from the Pledge of Allegiance the words "under God."

On the basis of court decisions, a conscientious objector no longer need profess a religious belief in order to obtain deferment from military service. The suggestion has been made that as a substitute he offer evidence of membership or activity in a pacifist organization.

Efforts are underway in various quarters to end tax exemptions for religious institutions.

The question has been raised concerning the propriety of having prayer on board U.S. vessels.

One school board felt that to have invocation or benediction at a graduation exercise came within the ban.

Pupils in one Long Island school have refused to join in the Pledge of Allegiance on the ground that it has become meaningless by repetition.

Flying a pendant over a municipal building in New Jersey containing the words, "One Nation Under God," has been regarded as open to legal attack.

(At this point Mr. RUSSELL of South Carolina took the chair as Presiding Officer.)

Mr. DIRKSEN. Mr. President, this is my own experience. A schoolteacher in Dayton, Ohio, who sought in his own way to meet the challenge of juvenile delinquency by teaching the youngsters, "Honor thy father and thy mother," called me on the telephone on a Sunday morning.

I said, "What is wrong?"

He replied, "I have been called in by the superintendent. I have been advised that this has violated the prayer ban and that my contract for the rest of the school year would not be renewed."

Think of that. "Honor thy father and thy mother"—which came down from heaven in the lightning of Mount Sinai. But it comes within the ban, so it must be cast into outer darkness.

In the case of De Kalb, Ill., which went to the Federal court and was heard by a U.S. district judge, whom I nominated, a family went to court over the same prayer used in the local schools which generated the Stein against Oshinski case. The matter finally came before U.S. District Judge Robson and he rendered a long opinion, after which he sent the case back and told the families and school authorities to settle the matter at the local level.

They came up with a rather amazing suggestion that the prayer should go like this:

> We thank you for the world so sweet;
> We thank you for the food we eat;
> We thank you for the birds that sing;
> We thank you for everything.

Whom do they thank?

They are corrupting an ancient prayer, the last line of which reads, "We thank you, God, for everything." They just placed "you" in place of "God."

This reminds me of an experience I had with a minister a long time ago, when I was to play one of the leading parts in a passion play. The minister said that he could not imagine me in the role of the man of Galilee.

I said, "What is your idea of the Man of Galilee? How should He be portrayed?"

He puzzled for a while and then replied, "Well, He is a light. He is a light. He is a light."

"Well," I said, "you mean that to portray Him to thousands of people we would just hang up an electric light bulb and say 'This is He?'"

Mr. President, does that make sense?

Does that dramatize and get the story across?

> We thank you for the world so sweet—

Who?

> We thank you for the food we eat—

Whom do they thank?

> We thank you for the birds that sing;
> We thank you for everything.

They do not say whom they are thanking.

That is really quite something.

There was objection even to this, notwithstanding the fact that the word "God" had been deleted from the last line of the prayer.

Now, already problems are developing with respect to the treatment of Christmas, Santa Claus, Christmas decorations, Christmas carols, the Nativity

scene, and everything pertinent to Christmas.

Mr. President, in the suburban school district just outside Pittsburgh where they planned to use the Nativity scene in a public school, they went down to see an attorney to get an opinion. Finally, his opinion was, "Well, it will be all right if you present it in a cultural vein."

How in God's name do we present the manger in a cultural vein and have any significance left?

How ludicrous, how stupid, how silly are they getting, these destroyers who want to destroy the religious traditions of this country?

The same problem will arise with respect to the Easter holiday and the work done by children in reproducing colored eggs. I do not believe that children fully understand what that is all about. The Easter holiday comes in the Resurrection season. That is also when the warm zephyrs come, and these things take on a new kind of light.

The egg is a symbol of fertility, which will spring to life with a new, fluffy little chick. The whole thing fits as a great, dramatic, religious piece of tradition.

How enriched mankind has been by all this.

But, how long is it going to last at the hands of the destroyers who want to stop prayer in the public schools?

The same problem will arise with respect to Thanksgiving, for the whole day was ordained as one of rejoicing and thanksgiving prayers for the blessings which we enjoy.

Truly, Mr. President, brutal cynicism is on the march in this country today, rivaled only by the efforts made in the Soviet Union where they eliminated Santa Claus and called him "Grandfather Frost."

Will that satisfy the children of America? Will it?

Will that enrich them?

Will that inspire them?

Will that bring animation and happiness to their little faces, and warmth to the hearts of their parents in the wintertime?

This I have got to see.

Mr. President, this country belongs to the people and not to the courts. When the framers of the Constitution affixed the Preamble of that document, it began with the words, "We the People . . . do ordain and establish this Constitution for the United States of America."

The document provided that it could be changed only by the will of the people through the ratification process. I still believe that this is the people's country.

Interest is mounting in this matter of prayer in the public schools, and it will continue to mount. If I have anything to do with it, it will escalate and mount even faster. The tide is rolling. It will not be stopped by the social engineers, by the world savers, by the cynics, or by some professors—that strange kind of liberal who is bemused by the idea of prayer in the public schools where pupils and students spend more of their waking hours than they do at home or in church combined. Under the law, they are compelled to go to school. That is virtually the law of the land, from Dominion to Gulf and from the Atlantic to the Pacific.

Let these decisions stand without clarification and in due course, Christmas, Santa Claus, Christmas carols, and everything else which has been so deeply entrenched in American religious traditions will go by the board.

Let it stand without clarification and the oaths taken by jurors, the chaplaincies in Congress, in the Army, the Navy, the Air Force, the Marines, and elsewhere, the Chapel in the U.S. Capitol, the oaths administered to legislators, in all of which the word "God" is used, will come under attack.

Let that decision stand without clarification and the work of dethroning God will go forward.

Let that decision stand without clarification and every teacher who believes in God and who believes that prayer is a roadmap to God will be in danger of losing his job—because who is his superior, and what does he think about it?

Let that decision stand without clarification and every teacher and school authority who finds belief in God an amusing myth can use it as a club over pupils and other teachers alike.

Let that decision stand without clarification and we make a mockery of the religious tradition of our blessed land.

Let that decision stand without clarification and you will have secularized America and thereby actually established a religion; namely, a secular philosophy divorced from all religion and all faith.

As I think of the professional testimony of some of the witnesses who appear, I think of a great American by the name of Billy Graham. I hoped he could come, after he got back from England, but he went to California, for much needed recreation, and took his two boys with him to see Disneyland. I thought I could catch him when he came back to Montreat, N.C., but I did not manage to catch up with him. However, he has been on the networks on prayer in public schools.

I had a telephone talk with His Eminence Cardinal Spellman, who told me over the phone he would love to come; but I know of the difficulties that arise when one has to go from one to the other in the hierarchy. But I know how he feels.

I think of the countless ministers who are not ivory tower administrators, but, rather, pastors who live with their people, who sit at their bedsides and pray, who comfort them in illness and death, who officiate at baptisms and weddings, and who sense the heart of the people and their devotion to prayer. In the first place, they were not invited to come; and in the second place, it would have placed a considerable financial and time burden upon them to come to the Nation's Capitol and testify before a subcommittee.

I think of the millions who by petitions, by signing ballots which appeared in newspapers, and by letters have affirmed their desire that there be voluntary prayer in the schools.

I think of the children, the millions whose souls need the spiritual rehearsal of prayer.

Right now we are in the football season. I like the crack of a collarbone as well as anyone. I guess that is why I like the Chicago Bears and the Green Bay Packers. But imagine the Chicago Bears football team, made up of green, inexperienced, unpracticed, and unrehearsed players, undertaking a game against the Cleveland Browns. It would be unthinkable because they have not been disciplined by practice.

We are moving toward the world series. Imagine the Giants, or whoever wins, taking on a team of completely unknown, unrehearsed, inexperienced players on an opposing team. It would be a ludicrous spectacle, to say the least, because such a team was neither disciplined nor practiced.

Mr. President, the soul needs practice, too. It needs rehearsal. That is another reason why it is so frightfully important in this segment of American life.

I think of millions we have spent, the debate that is raised, the formulas and plans which have been contrived to meet the rising tide of juvenile delinquency in the country. How many of those have had the sweet sustaining force of prayer and the spiritual discipline of prayer? Had that been the case, the chances are that the problem would be whittled to its lowest dimensions.

Mr. President, I conclude my statement by going back to the testimony of Rev. Robert G. Howes, associate professor, the Catholic University of America, member of the board of governors of the Constitutional Prayer Foundation in Washington, D.C., representative of the Citizens for Public Prayer in Massachusetts. Not only did he testify in behalf of these organizations, but also officially in the name of the Most Reverend Bernard J. Flanagan, D.D., Roman Catholic bishop, of Worcester, Mass.; also the Diocesan Council of Catholic Women of Worcester, Mass.; also in behalf of His Honor George Wells, the mayor of Worcester, Mass.; also for many individuals, elected officials, and boards who have expressed themselves across the Commonwealth of Massachusetts supporting the people's amendment for public prayer.

Mr. President, I ask unanimous consent to place in the RECORD, and then I shall rest my case, the testimony of Rev. Robert G. Howes, associate professor, Catholic University of America, who so well refutes the arguments which have been made against this amendment.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

TESTIMONY OF REV. ROBERT G. HOWES, ASSOCIATE PROFESSOR, THE CATHOLIC UNIVERSITY OF AMERICA; MEMBER, BOARD OF GOVERNORS, CONSTITUTIONAL PRAYER FOUNDATION; WASHINGTON, D.C., REPRESENTATIVE, CITIZENS FOR PUBLIC PRAYER, MASSACHUSETTS AREA, BOX 1776, RUTLAND, MASS.

(This testimony is the official statement of Citizens for Public Prayer, its Michigan and New York Area affiliates as well as its Massachusetts affiliate. Father Howes is also testifying in behalf of the Dirksen Peoples Amendment for Public Prayer officially in the name of (i) Most Rev. Bernard J. Flanagan, D.D., Roman Catholic bishop of Worcester, Mass., (ii) the Diocesan Council of

Catholic Women, Worcester, Mass., and (iii) the Honorable George Wells, mayor of the city of Worcester, Mass., as well as officially for those many individuals, elected officials and boards who have expressed themselves across the Commonwealth of Massachusetts supporting the Peoples Amendment for Public Prayer, August 5, 1966)

"Almighty God, we acknowledge our dependence upon Thee and we beg Thy blessings upon us, our parents, our teachers and our country."

These twenty-two simple yet beautiful words, says the United States Supreme Court, are unconstitutional. We come, with respect but also with a serious urgency, asking passage of a Peoples' Amendment for Public Prayer which will forever reverse this tragic judgment. We come, in the name of those many Americans who have joined us, to speak a loud thanks to Senator EVERET M. DIRKSEN, Congressman FRANK J. BECKER, and those other Senators and Representatives who now and before have led this great grass-roots effort. We come before you today convinced that the two "prayer" decisions are very seriously wrong and that, quite beyond their apparent localization, they place precedents which must, if the Court is true to its own logic, destroy one by one each surviving instance of public reverence among us. We come, as Abraham Lincoln came once one hundred years ago to the bar of public opinion in the matter of Dred Scott, convinced that for all the fine words and nice dicta, what counts is the sheer deed of these decisions. And the deed of the decisions in present question is an absurdity, contradictory at once to the sustained national customs and the clear will of the American people! We come certain that unless and until a reasonable prayer amendment is proposed to the nation, democracy is mocked and Americans everywhere must continue to wonder if this Hill is indeed a place where their voices are responsively heard. Because, gentlemen, now as seldom before those voices are loud, and united, around us here.

TESTIMONY OF REV. ROBERT G. HOWES, ASSOCIATE PROFESSOR, THE CATHOLIC UNIVERSITY OF AMERICA, FOR MASSACHUSETTS CITIZENS FOR PUBLIC PRAYER

Perhaps one of the most important aspects of the matter now before us is its critical time dimension. Seldom have so many Americans been so patient and yet so insistent for so long in so basic an issue. Seldom has the nation, united as almost never in any previous peacetime, had cause to doubt the democracy as it has here. Four years ago on this side of the Hill, and two years ago on the House side, hearings were held to the same overall purpose for which we now meet. And yet still the clear national will to reverse the tragic precedents set down in the two Supreme Court "prayer" decisions has failed even to reach the floor in either chamber.

Two years back, when a nearly successful discharge petition forced hearings in the House Judiciary Committee, I was privileged to share very closely in the prayer amendment drive. I worked then with the two prayer defense attorneys, the Honorable Bertram B. Daiker of Port Washington, New York, and the Honorable Francis B. Burch of Baltimore, Maryland, and, especially, with Congressman FRANK J. BECKER of New York and his many associates in the House. Even more importantly, I talked to and corresponded with literally thousands of Americans who believe as I do in the right of public prayer. This I note in no sense of pride, because, while we certainly did not lose our case at that time, after an unconscionable lapse of two years, the House Judiciary Committee has still reported out no prayer bill. I put it down rather to suggest the context in which I now testify.

As the people of America rally once again for prayer, I believe these conclusions emerge from a time-view of the amendment effort:

1. Far from subsiding, the intention of the nation, tested in the usual fashion, remains very strongly pro-amendment. Two years ago, in our testimony before the House Judiciary Committee, we had detailed the wide extent of popular support for a prayer amendment.[1] The very day present hearings were announced, the same issue of the CONGRESSIONAL RECORD carried the results of a poll in the home district of Congressman MCDADE. This poll evidences two important things.[2] Ninety percent of those responding favored a prayer amendment. There were fewer undecided votes on the prayer question than on any other matter. Senator DIRKSEN himself has said: [3]

"Insofar as I can determine, more than 81% of the people disagree with the courts. Two weeks ago, one man came to Washington and dumped 52,000 letters of protest on my desk. Prayer groups are organizing. Sooner or later Congress must come to grips with this matter."

In October of 1964, the nationally known Lou Harris Poll indicated that well over 80% of the American people favor a prayer amendment. There are these further indications:

(a) Polling his home district (the CONGRESSIONAL RECORD, April 6, 1966, pp. 7945–7946):

Do you favor a constitutional amendment to permit Bible reading in public schools? Yes, 81 percent; no, 19 percent. Almost everybody has an opinion either pro or con about Bible reading. Only 2.4 percent of the people * * * failed to answer this question.

The Honorable ROBERT J. CORBETT (MC, Pennsylvania).

(b) Polling his home district (the CONGRESSIONAL RECORD, May 16, 1966, pp. 10723–10724):

Do you favor a constitutional amendment to allow voluntary prayer and Bible reading in public schools?

Yes, 77.5%; no, 22.5%.

The Honorable JOEL BROYHILL (MC, Virginia).

(c) Polling his home district (the CONGRESSIONAL RECORD, June 2, 1966, p. 12224):

Do you favor a constitutional amendment permitting prayer in public schools?

Yes, 83.4%; no, 10.8%.

The Honorable E. C. GATHINGS (MC, Arkansas):

(d) Polling his home district (the CONGRESSIONAL RECORD, June 15, 1966, p. 13337).

For a prayer amendment, 81.22%.

The Honorable JOHN S. MONAGAN (Connecticut).

(e) Polling his home district (the CONGRESSIONAL RECORD, June 9, 1966, p. 12928):

"Do you favor a constitutional amendment to restore prayer in public schools?"

Yes, 81.2%; no, 16.8%.

The Honorable E. ROSS ADAIR (Indiana).

(f) Polling his home district (the CONGRESSIONAL RECORD, July 18, 1966, p. 16095–16096):

"Do you favor a constitutional amendment to allow voluntary prayer and Bible reading in public schools?" Yes, 82.8%.

The Honorable HASTINGS KEITH (Massachusetts).

In fact, on a recent national Columbia Broadcasting System TV Poll, the American people spoke with greater unanimity to a prayer amendment than to any other polled position: Clearly the nation at its grass roots has sustained its original conviction that the Supreme Court was seriously wrong in its "prayer" decisions and that radical remedial action is essential.

2. Once again here in the Senate, as before in the House, an unusually large and diverse number of members backs the prayer amendment effort. Once again, too, this impressive sponsorship is backed by a great many responsible Americans. In June of 1966, for instance, the National Conference of Mayors, meeting in Texas, resolved for the prayer amendment. On February 8 and February 14, 1966, respectively, the Massachusetts House of Representatives repeated its action of two years back, in conjunction with the Massachusetts Senate, and sent to the Congress this resolution:

"Whereas it is the will and desire of the majority of our citizens to recognize the existence of God and our dependence on Him; and

"Whereas the recital of voluntary prayers in our public schools will accomplish that purpose and will help maintain traditions cherished by so many of our citizens: Now therefore, be it

"Resolved, That the General Court of Massachusetts respectfully urges the Congress of the United States to enact legislation presenting to the States a proposed constitutional amendment permitting the recital of a non-sectarian prayer in our public schools."

In the CONGRESSIONAL RECORD, June 6, 1966, at pages 12326–12329, two detailed pro-amendment resolutions by the legislature or the State of Maryland are carried in full. I ask permission that the text of these resolutions be included as part of our testimony. In the CONGRESSIONAL RECORD, June 6, 1966, at page 12325, a similar concurrent resolution by the legislature of the State of Louisiana is carried in full. I ask permission that the text of this resolution be included as part of our testimony. In the daily CONGRESSIONAL RECORD, April 25, 1966, the Honorable HAROLD D. DONOHUE, of Massachusetts, spells out prayer amendment support on the part of the City and Council and Most Rev. Bernard J. Flanagan, D.D., Roman Catholic bishop, of Worcester, Massachusetts. I ask permission that the text of Congressman DONOHUE'S remarks, at page A2223 of the said issue be included as part of our testimony. In the CONGRESSIONAL RECORD, June 2, 1966, at page 12231–12232, the HONORABLE THOMAS P. O'NEILL, JR., of Massachusetts, details support for the Dirksen amendment effort by that great Churchman, Richard Cardinal Cushing of Boston. I ask permission that the text of Congressman O'NEILL'S remarks be included as part of our testimony.

Also recorded for a prayer amendment are, among others: (a) The National Governors Conference, (b) the National Jaycees, (c) Bishop Fulton J. Sheen, (d) Dr. Billy Graham, (e) the National Council of Catholic Youth, (f) the Disabled American Veterans, (g) the immediate past president of the Worcester, Massachusetts, Council of Churches, Dr. Malcolm Matheson, (h) the Baltimore, Maryland, Presbytery, (i) the National Conference of Mayors in its June 1966 convention.

3. Educators, parents and children across America continue in a quandary as to what can and what cannot be done to accommodate what some feel to be the ambiguous mandate of the Supreme Court in the "prayer" decisions. Usually, the decision is made to avoid rather than to dare, when any conceivable question arises as to this or that reverent practice in the public class-room. Can the 5th stanza of "The Star Spangled Banner" or the 4th stanza of "America" now be constitutionally sung by public school children? Is a simple kindergarten prayer which mentions the Deity constitutionally possible? What about Christmas, carols,

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[1] See School Prayers, House Judiciary Hearings 1964, Part II, pages 986–1032.

[2] "The CONGRESSIONAL RECORD," July 13, 1966, p. 15484.

[3] "The CONGRESSIONAL RECORD," May 24, 1966, p. 11243.

manger scenes? Must graduating classes hum when the word God occurs in a commencement song? The whole point is—there survives a serious confusion and the resolution of that confusion, even by well-meaning school boards, seems to be rather on the side of ruling God out rather than letting a controversial God into the public class-room.

4. The minimalists—many of whom have read but all of whom have seriously underestimated the two "prayer" decisions—contend that the Court actually decided only a very limited issue and that there are, in any case, valid alternatives to the moment of prayer which can be used in the public school. In fact, the Court decided a maximum issue, placed a fatal equation which, if developed logically and consistently applied, must operate to destroy every surviving instance of public reverence in the land. In sustaining their demand for a prayer amendment, the American people give clear evidence that they recognize this essential harm in the "prayer" decisions. In rallying once more to the cause of public prayer, the American people demonstrate again their ability to penetrate through the dicta, the high words, and the incidental remarks of these decisions and to discover their fundamental mistake. As the Superintendent of Public Education in a large State told us, if the conclusion is so ridiculous, there must be something seriously wrong in the premises. The American people do not understand the complexities of legal semantics. The American people cannot follow this debate in all its detail. But the American people know that free, non-denominational prayer has been barred to their children in the public school. And the American people know that this barring is a clear threat to those other practices of public reverence which they hold dear. Among those who concur with the nation:

(a) Henry P. Van Dusen, former President of the Union Theological Seminary, New York City (letter published in the New York Times, July 7, 1963):

"The corollary in both law and logic of the Supreme Court's recent interdictions is inescapable, prohibition of the affirmative recognition and collaboration by government at all levels with all organs of religion in all relationships and circumstances. A consistant application of such a policy would involve a revolution in the Nation's habitual practice in the matter of religion . . . Nothing less than this is at stake.

(b) Rev. Dr. D. Elton Trueblood, professor of philosophy at Earlham College, Richmond, Indiana, has written: "This is a ruling which affects deeply the whole of American life and represents a radical change in the cultural pattern in many parts of the Nation." Because Dr. Trueblood's remarks are so very pertinent, I ask that they be included in full as part of our testimony. Reference: "Presbyterian Life", issue of May 1964.

(c) In a fine editorial on June 18, 1963, the official publication of the Roman Catholic Archdiocese of Boston, Massachusetts, wrote under the heading:

"ALL PUBLIC LIFE AFFECTED

"The same tedious arguments emphasizing the 'establishment of religion' clause are brought forth to support a position which turns its back on the total American tradition and outlaws the present practices of 39 States. Let us suppose that the Lord's Prayer and the Bible are excluded from the American public schools, for precisely the reasons given by the Supreme Court. What is the next step? Clearly, all other expressions of religion in public life must now be deleted. Let us not wait for them to come up case by case, but in one single gesture let them be suppressed."

As for alternatives, two things must be noted. First, no matter how valid any so-called alternative may be, it does absolutely nothing, and this is critically important, to repeal the precedents which now stand in the law of the land. Second, we have discovered no regular provision in most of our public schools of any acceptable substitute for the moment of prayer. We shall talk to each of the proposed substitutes later in our testimony. Suffice it here to reiterate that even where initial efforts in this direction have been essayed, they remain so very extraordinary as to attract national attention. They are not in any case the rule, but clearly a limited exception. Again, it must be stressed even an almost perfect substitute for the moment of prayer would leave the tragic precedents of the "prayer" decisions untouched and this is where reversal is imperative.

In short, time adds a critical dimension to the matter now before us. First, a clear and increasingly serious challenge to the democratic process has been placed. Second, the fact is more and more evident as further court cases are brought, as well as from the statements of some of those who initially pushed for the prayer ban, that the two "prayer" decisions are by no means minimal, narrow judgments, but rather very fundamental precedents which (even with their pleasant dicta) can and will be used in a widening attack against other instances of public reverence. Third, the massive national will for a prayer amendment survives and is backed by many responsible Americans, as individuals and as organizations. Fourth, what is obviously now required is not the prolongation of debate, a debate long since fully joined, but the immediate proposition to the American people at their several State Capitals of a reasonably worded constitutional prayer amendment. What is now required is not an affirmative substantive vote in the Congress on the merits of school prayer, but rather a specific piece of enabling legislation which will permit the nation to decide this basic issue. We have no doubt whatsoever that, given their rightful chance, the American people will decide overwhelmingly for public reverence. We challenge our opponents to take their cause, as we have ours, to the people.

The question is repeatedly asked, sometimes in honesty, many times to confuse—but what is so important about the moment of prayer? Why are you fighting so hard to have this moment restored in our public schools? The answer of course is neither quick nor simple. But two things are clear. First, the effort here is not for school prayer alone but rather to arrest once and for all at the prayer point a process of secularism which, unless radically checked, must erode away all public reverence. Second, while the moment of prayer by itself will not change the face or the soul of America, it is strikingly evident to the great majority of the American people that it remains a most valuable experience in reasonable pluralism and must survive.

It is always difficult, as one examines the record of man through history, to decide just exactly when a process of deterioration sets in which could have been checked had responsible corporate action been taken, it is equally difficult to judge the instant in any such process at which a most effective intervention on the part of the public could have been mounted. If, God forbid, the time should arrive when the religious inheritance of this Nation must lie dead like Lenin in a cold mausoleum, when the children of this nation must divide their learning lives into two parts—a private part where God can come, a public part where He cannot come, when God has become only the Lares and Penates of Rome again—personal deities who stand in temples and sequestered domestic corners but is denied admittance to courts, legislatures and other civic assemblies and instruments—then surely these two "prayer" decisions must be ranked in the list of key precedents and the opinion must validly lie that a strong public intervention here could have halted the tragic process.

There are those who tell us—this is neither the time nor the place for remedial action. You should either (a) have attacked earlier (b) attack later or (c) object elsewhere—they continue. We rejoice of course, that this miniscule elite has somehow discovered a superior wisdom in these critical matters. For ourselves, we cannot believe that the American people have made a mistake by rallying, as they have seldom rallied before, to the cause of prayer in the public school. It is not for us to suggest to the nation that its legal expertise at this point is faulty. It is for us to recognize that, for better or for worse, upwards of 80% of our fellow citizens have reached a moment of basic decision. We deal here with the penny on the pound of tea. Undoubtedly, there were those in Boston 200 years ago who told the patriotic "Indians"—don't throw the tea into the harbor, don't fight the tax, it's not important, this is neither the time nor the place for remedial action! But the moment of decision had arrived in that great colonial Boston. How and why it did, at this particular instant in the night in Boston harbor, we don't presume to know. How and why the American people, so often distinct from those who should be leading them, have recognized that this is the moment when they must resolve once and for all the great issue of public reverence, we don't presume to know. One thing we do know—this is it, Minute Men from plain places across America have converged on the minute now before you.

What is so significant about the moment of prayer? In our Appendix I, we are proud to include pertinent excerpts from the splendid text "This Nation Under God," by Fordham Professor Rev. Joseph Costanzc S.J. Harvard Law School Dean Erwin N. Griswold adds this important dimension:

"The child of a nonconforming or minority group is, to be sure, different in his beliefs. That is what it means to be a member of a minority. Is it not desirable, and educational, for him to learn and observe this, in the atmosphere of the school not so much that he is different, as that other children are different from him? And is it not desirable that, at the same time, he experiences and learns the fact that his difference is tolerated and accepted? No compulsion is put upon him. He need not participate. But *he, too, has the opportunity to be tolerant* (emphasis supplied). He allows the majority of the group to follow their own tradition, perhaps coming to understand and to respect what they feel is significant to them. Is not this a useful and valuable and educational and, indeed, a spiritual experience for the children of what I have called the majority group? They experience the values of their own culture; but they also see that there are others who do not accept these values, and that they are wholly tolerated in their nonacceptance. Learning tolerance for other persons, no matter how different, and respect for their beliefs, may be an important part of American education, and wholly consonant with the First Amendment. I hazard the thought that no one would think otherwise were it not for parents who take an absolutist approach to the problem, perhaps encouraged by the absolutist expressions of Justices of the Supreme Court, on and off the bench."

Because of their excellent statement of our own feelings in re the majority-minority aspects of school prayer, I ask permission that the full text of Dean Griswold's remarks be included as part of our testimony. See Griswold, "Absolute in the Dark", 8 Utah Law Review, p. 167 ff. (1963). But if

the moment of prayer in a public school is important, its denial is also important. Seldom has this fact been more sensitively explored than in another excellent text "The Supreme Court and Public Prayer", authored in 1964 by Fordham University Law professor, Charles E. Rice, and published by the Fordham University Press. I ask that chapter IV of this text, "Can Government be Neutral?", pages 73–81, be included as part of our testimony.

The question—but whose prayer shall be used—is a question which has been again and again dragged across our path as we fight for the return of prayer to the public school. There are those who raise it honestly. There are others who keep raising it even after it has been repeatedly answered. The sincerity of these people is, most surely, open to doubt. Whose prayer? We might return the question—whose prayer was in fact used for decades in state after state across these United States in public classrooms with a minimum of objection? The whole point is that in this as in such other intricate issues as civil rights, loyalty, public economic—we must recognize the difficulty of exact language but not stop there. We have got, quite simply, to proceed here as we do in these other issues. The starting place is not language but the sheer need for action to accomplish a necessary purpose. There is no doubt whatsoever of the requirement for care and expert deliberation as we frame a prayer amendment. But what an utter tragedy it would be if for want of a reasonable consensus about words, the nation were to be deprived of public prayer! What an utter tragedy it would be if, after having found reasonable solutions to other complex problems, no reasonable solution could be found to this! Whose prayer? We remain convinced that the American people in their native good sense and through their traditional educational instrumentalities, will as they have in the past answer this question with a maximum of wisdom and a barest minimum of mistake. But, our opponents continue, suppose there should be a Buddhist majority in a given school district, or a Roman Catholic majority? Won't this majority elect for a Buddhist, or Roman Catholic prayer? Such a question represents, in our judgment, a pitiful underestimation of the American people. To suggest that a sectarian majority would be so callous, so unconcerned for the rights of its neighbors that it would enable a strictly denominational prayer in the public schools of its community is, in a very real sense, a slander on the record of the nation. We are certain, particularly in our day of generous pluralism, that the question of whose prayer will be answered wisely as the great rule in all our school districts. And, even where there might happen a rare exception, a remedy will still lie in the courts and in non-participation.

At the very base of our position here is the conviction that the two "prayer" decisions are seriously inimical to the interests and the explicit will of the reverent majority of this nation. Our opponents ask—but why then are so many men of "religious" identity supporting them? We respect, of course, honest difference of opinion. We do not respect the culpable ambiguity of some "men of religion" who have either (a) adverted to the admitted difficulty of wording a reponsible prayer amendment and then absented themselves, now for years from the counsel of those who, here on the Hill and elsewhere, have been patiently trying to come up with just such an amendment, or (b) spoken words of uncertainty to constituents who were desperately concerned for a clear trumpet in this critical matter.

We believe, too, it must now be strongly noted, that if our polls, as indicated in this testimony, are accurate, some of those who have come here with titles, ostensibly speaking for religious groups, are in fact generals without armies. They may have staffs and public relations offices. They do not have their own congregants with them. One of my most inspiring moments two years ago was to sit in Congressman Becker's office on the other side of the Hill and read the letters that poured in after one or another of the generals without armies had spoken to the House Judiciary Committee against prayer. Again and again, Americans everywhere protested—he did not represent me even though I am a member of the congregation whose title he bears! We submit, respectfully, that this is a matter of principal significance as the Committee weighs these days of testimony. It is simply impossible that upwards of 80% of the American people support our position and at the same time some so-called "religious leaders" are in fact representing that people in opposing this position.

Again, while respecting honest difference of opinion, we believe that the cause of religion in these United States is very seriously hurt by the two "prayer" decisions. When, as Mr. Justice Stewart strongly implies, and others have explicitly stated, a "religion of secularism," an official position favoring the non-believer over the believer, is blessed with government endorsement, then we have entered indeed into a game of Russian roulette with our reverent practices and tradition. There is simply no saying which must next take the fatal judicial shot. The greater tragedy, though, is that so-called "religious leaders" have blinded themselves to the danger and have gone chasing after pleasant dicta while the deed of the decision penetrates through to the most ordinary American who joins us in denouncing it.

We are asked also—but doesn't religion belong in the family and home and church, not in the school? The answer to this is so simple that those who keep asking it must now be suspect. Religion belongs, of course, in family, home and altar place; but it belongs also in the class-room where the bulk of America's young people approach the arts and sciences of life for the first time. Religion is not strengthened in the heart and head of a youngster by wiping it off his lips. There is no conceivable connection as between a public class-room barren of reverence and a resurgence of religion in other aspects of our life together. Besides, as we have indicated above, that brotherhood of prayer which for so long in so many places distinguished our people, is an important experience in pluralism which cannot be duplicated by a God cornered at the hearth and sectarian altar.

A number of supposed substitutions for the moment of prayer have been suggested. We talk to them here, briefly. Let it be clear from the beginning that, should the incredible happen and the will of the nation fail to survive here on the Hill in a matter of a prayer amendment, we shall require to gather the crusts which may for a time remain behind for reverent parents to feed their public school children on. Our attitude to the supposed substitutions, then is this. First, none is really adequate. Second, none, even the most perfect, will in any way eradicate the tragic precedent of the two "prayer" decisions. Third, even though some emasculated type of reverence may for a time survive, we are convinced that each meaningful experience of religion in public schools stands now under a shadow and must, if the Court is true to itself, be seriatim banned. One suggestion as replacement for school prayer is a silent moment of meditation. A quiet God is better than no God, that is true. But a quiet God removes that experience in pluralism which a spoken God encourages. Besides, meditation is a difficult thing even for adults. To suppose that grade school youngsters can accomplish it properly is at best illusive. Interestingly enough, the same session of the Massachusetts General Court (legislature) which permitted silent meditation petitioned the Congress for a prayer amendment, thus recognizing that its earlier action was purely a holding operation and not definitive in the case. Another suggested replacement is comparative religion class. We wonder if this can be really achieved. It is not difficult to foresee the need for Solmonian teachers to relate one religion to another, nor the rapidity with which enemies of our children's God will rise to challenge such a class in courts whose record is clear.

A third suggestion is religion as part of art and history. And religion belongs in art and history, but what a tragedy it would be if God could come into a public school only as a footnote in art and history classes! Still another suggestion is for a kind of moral assembly in which God might just possibly squeeze in between quotations from Ben Franklin, Einstein, Thoreau and others. But is this enough? Why must the reverent millions of American parents settle for this intermittent God? No, and the record is evident for all to see, no effective substitute has yet been proposed and widely practiced. Such cases as do exist are so very rare as to attract national attention. And, again, *no matter how valid the substitute, it would do nothing to repeal the tragic precedents now in place and the more valid it was the more chance there would be of its judicial denial.*

Perhaps one of the most curious arguments, used in at least one major church correspondence of my knowledge to forestall action in support of the Peoples' Amendment for Public Prayer, suggests that because the amendment does not solve all instant problems in Church-State relationships it is inadequate, even dangerous. But where or when in the public life of any modern nation has one single legislative bill satisfied totally all the need in any major subject area? Must we refrain from solving some problems because we simply cannot solve all problems? In any case, here as elsewhere, a savings clause, can be affixed to the prayer amendment to prevent any conceivable overlap from it on existing practices. The point is, though, again here as before—where were those who now object to the Dirksen proposal for reasons of language during all the long months when men of integrity worked to find the best possible wording for a prayer amendment?

It has, often, been said that so-called "legislated prayer" is no good, that in fact it demeans religion. And this would, of course, be true were government to decree a specific religion and inflict sanction on those who refuse to follow an official liturgy. But is this at all the case with free, non-denominational prayer in a public classroom? The answer would be obvious if, once more, responsible men were not answering otherwise. Government, in our belief, exists to do for men collectively what they wish done and cannot accomplish even by pooling their single capacities. The principle of subsidiarity suggests that there are times when a larger unit of society must accomplish what a smaller unit cannot accomplish, but which the citizens of that society deem necessary for their communal existence. Quite naturally, then, public school parents turn to public school boards and public school superintendents to assure reverence in the class-room. Quite naturally, while in no way imposing or dictating, those boards and superintendents have taken perfectly normal action to accommodate the will of their constituents. This is by no means legislated prayer. Far from demeaning religion, this is a process entirely consonant with our democratic traditions and with the best wisdom over time of this reverent people. Said

Vatican II in its "Decree on Education" (#7):

"The Church gives high praise to those civil authorities and civil societies that show regard for the pluralistic character of modern society and take into account the right of religious liberty, by helping families in such a way that in all schools the education of their children can be carried out according to the moral and religious convictions of each family."

Gentlemen, clearly the moral and religious convictions of the great majority of the nation's families include the right to free, non-denominational prayer in the public classroom. When government moves to recognize these convictions, it does a proper and right thing.

The Dirksen amendment, then, goes to the heart of the two principal purposes at stake here. It restores free, non-denominational prayer to the public school. It blocks any further erosion of public reverence. It does so, we believe, with adequate language, though, to satisfy the best need of the situation, we would accept the addition of a wise savings clause much as we did two years ago in our testimony in the House on the proposed Becker prayer amendment. The Dirksen amendment, let it be crystal clear, is restorative, clarifying of the First Amendment. The letter of the law, as the Court now spells it out, has gotten dangerously out of kilter with the spirit. We believe it is also out of kilter with the original letter. Far from attacking or rolling back the Bill of Rights, this Peoples Amendment for Public Prayer will lift it back to its first common sense. It is not we who call for amendment who weaken the Constitution. It is those who, in a false reading of that Constitution, now oppose the united will of millions of Americans who demand that the Constitution as they have always understood it be preserved once and for all.

Gentlemen, it would seem that the task before you is now clear. The issue has been canvassed. The will of the nation has not changed. The generals without armies have not been able to convince even their own congregants. Your job, in all respect, is not to decide the continuing debate. Your job is not to return prayer and Bible reading to the public class-room; although I am sure I speak for the massive majority of Americans when I applaud those Senators and those Representatives who here, and earlier, have testified to the value of such prayer. Your job is to enable a popular decision. Elected by the people and responsive to their conscience, your job is to put this question clearly and quickly to them for an ultimate judgment. If those who have come here dragging up the old red herrings of an attack on the Bill of Rights and minority rights are as confident of their logic as they seemed to be before you, why let them carry their case to the people, as we have done.

Gentlemen, once you complete your task, in fifty State capitals a splendid debate begins. Once again everywhere the nation must reflect on the role of God in its public life. We have no doubt whatsoever what the decision will be. In fifty States, the American people—while some of their so-called theologians quibble over whether God is dead and the city is secular, while some of their so-called religious leaders oppose—will re-affirm in one great voice that God lives, that the city is not secular, that religion must survive proudly central in our national heritage. "Religion," said the Roman Catholic hierarchy of these United States a few years ago, "is our chief national asset." Give them the chance, and the American people will repeat those words. Give them the chance and they will write again, as Boston wrote once in its proud motto—"Sicut patribus, sit Deus nobis." As God was with our fathers, so let Him be with us!

APPENDIX I

One of the truly great books in prayer amendment literature is that authored by Rev. Joseph Costanzo, S.J., Professor of Historical Jurisprudence in the Fordham University Graduate School, New York City, and published as This Nation Under God by Herder and Herder, 1964. So that the Committee may have available to it some of the strong wisdom of these pages, we include the following excerpts as part of our testimony:

(a) "The more the context of the New York prayer (struck down in the first 'prayer' decision) and the circumstances attending its optional recitation are examined, the more can be discerned the vast possibilities it offered for the increase of friendly community life. First, the children and their approving parents of different faiths and church affiliations came together in a prayer based on the common bonds of their religious beliefs. Their religious sectarianism was in no way experienced as a barrier to the brotherhood of all men under the Fatherhood of God. . . . Secondly, it provided an opportune and excellent educational training and habituation to the exercise of individual choice in the midst of others according to the vaunted American boast of individualism and free self-expression. Religious differences are a very broad fact even for the most enlightened adults, and social adjustment in this matter is essential to good community relations. Should not the youngsters mature gradually in this delicate experience with civility toward one another without resentment and without inhibition? The circumstances for the corporate prayer provided an early schooling for both the dissidents and the consentients to advance in mutual reverence for one another's religious choices. Thirdly, the dissenter and the minority must surely be shielded from majoritarian imposition. So too must the majority be protected from the unilateral dictation of the absolute dissenter. It is a strange pathology that when people in increasing numbers freely choose to act agreeably in unison there is less cause for public gratification than in the uncompromising protestations of the dissenter. . . . No one can deny that public law is burdened with an almost insurmountable task when it is confronted with the problems of religious pluralism. The voluntary nondenominational prayer was possibly one of the best and, at that, a minimal resolution of this thorny moral-legal problem," pages 132, 133.

(b) "American believers are losing by default. They have taken their spiritual heritage for granted. They have allowed a creeping gradulism of secularism, under one specious pretext or another, to take over their public schools. A vociferous and highly organized pressure group is exerting its own form of indirect coercive pressure upon the American community. Determined to deflect American national traditions and heritage from their authentic historic course, this group is cutting a decisive swath across the nation, advertising for clients to challenge in court what is obnoxious to them. *Whoever works for the destruction of the positive doctrine of accommodation and mutual adjustment must shoulder the blame for uprooting the bonds of concord and friendship and for forcibly infecting bitter antagonisms into the nation's pluralistic society*" (emphasis supplied), pages 131, 132.

(c) "These religious truths, fundamental because they are formally part of the Jewish, Protestant and Catholic faith, far from dividing have drawn our students together in silent prayer in public school exercises and in the salute of allegiance 'under God' to the flag. Oddly enough and contrary to their protestations, it is the separatists, neutralists and secularists who are truly divisive for they have raised issues that in the past have not troubled the students in public school exercises; and they have pointed loudly to the differences between the various faiths which students in their generosity keep to themselves. It is their bond which is vague and threateningly dangerous monism, a mechanical unitarism in a spiritual and intellectual vacuum . . . There is nothing divisive in the idea of brotherhood of men by divine creation, of fraternity by divine commandment of charity and justice binding in conscience. Far from being vague, these are definite religious truths which have bound our nation in peace and in war and have aroused our consciences against injustices in our midst as well as in other countries. A purely secular education is false to the nature of man and to God; false to American history; false to that philosophy of life and education which refuses to departmentalize what is inseparately one—the continuity of the spiritual life and moral development of the whole person, whether at home, at church or synagogue, or at school," page 104.

APPENDIX II

We are delighted to include in our testimony these official expressions from elected officials in the Commonwealth of Massachusetts:

(a) Plymouth, Massachusetts, Board of Selectmen, on record for prayer amendment. Resolution, May 16, 1966. Mrs. Leona Asker, Clerk.

(b) Ashland, Massachusetts, School Committee, on record "In support of a Constitutional amendment which will permit voluntary retention of prayer and Bible reading in the public schools of our land." May 18, 1966. David Mindess, Superintendent of Schools.

(c) Stoughton, Massachusetts, School Committee, on record for the Dirksen amendment, May 17, 1966. Joseph H. Gibbons, Superintendent of Schools.

(d) Milford, Massachusetts. Re-affirmation of August 15, 1963 proprayer amendment resolution, in letter of May 23, 1966. David I. Davoren, Superintendent of Schools. School Committee.

(e) Palmer, Massachusetts. "Unanimously voted . . . in favor" of prayer amendment, Letter dated May 25, 1966, Joseph Molzenski, Secretary, School Committee.

(f) Rutland, Massachusetts. Board of Selectmen, "At the May 16th meeting . . . on record as favoring a constitutional amendment to safeguard public reverence in this nation and to bring prayer back to our public schools." George R. Griffin, Clerk.

(g) Southborough, Massachusetts, Board of Selectment. Pro-prayer amendment resolution May 3, 1966. Mary J. Firmin, Clerk.

(h) Truro, Massachusetts. Board of Selectmen. Amendment resolution notified in letter of May 13, 1966. Messrs. Horton, Benson, Perry.

(i) Granby, Massachusetts. Board of Selectmen. "The Board of Selectmen will go on record to support the return of prayer to the public school systems, where it justly belongs." Romeo N. Monat, Board of Selectmen.

(j) Stoughton, Massachusetts. Board of Selectmen. Resolution "in favor of the (prayer) amendment", June 15, 1966. Margaret E. Fitzpatrick, Clerk.

(k) Scituate, Massachusetts. School Committee. Pro-amendment resolution, June 8, 1966. W. A. Shannon, Superintendent of Schools.

(l) Waltham, Massachusetts. "Support the (prayer) bill introduced by Senator EVERETT DIRKSEN. June 1, 1966. James Fitzgerald, Superintendent of Schools.

(m) Athol, Massachusetts. School Committee. Pro-prayer amendment resolution.

June 1, 1966. Curtis F. Bumpus, Superintendent of Schools.

(n) Winthrop, Massachusetts. School Committee. Pro-prayer amendment resolution, June 1, 1966. Arthur W. Dalrymple, Superintendent of Schools.

(o) Wrentham, Massachusetts. "Unanimously on record in support of a Constitutional (prayer) amendment." May 24, 1966. William L. Burke, Superintendent of Schools.

(p) Westborough, Massachusetts. Board of Selectmen. Pro-amendment resolution. Letter of May 23, 1966. Deane Collins, Clerk.

(q) Westwood, Massachusetts. School Committee. Pro-prayer amendment resolution "voted unanimously." June 2, 1966. Erwin A. Gallagher, Superintendent of Schools.

(r) Worcester, Massachusetts. We have been asked (letter of July 27, 1966) to read this statement into the record of these hearings:

"Ever since this issue first arose, following the Supreme Court decision against public prayer, the Worcester City Government has been solidly in favor of an amendment such as the one now proposed. On two occasions resolutions have been passed by the Worcester City Council and the Worcester School Committee affirming this position. In the light of these resolutions, you may place the Government of the City of Worcester on record as being solidly in favor of the proposed amendment to the Constitution.

"GEORGE A. WELLS,
"Mayor."

(s) Andover, Massachusetts. Pro-prayer amendment resolution. Board of Selectmen, November 18, 1963. William Stewart, Secretary.

(t) Shrewsbury, Massachusetts. Board of Selectmen. Pro-prayer amendment resolution. November 25, 1963. Ernest A. Tosi, Secretary.

(u) Tisbury, Massachusetts. Board of Selectmen. Pro-prayer amendment resolution. November 14, 1963. Thomas J. Rabbett, Chairman.

(v) Webster, Massachusetts. Board of Selectmen. Pro-prayer amendment resolution. November 15, 1963. Lester A. Magnant, Chairman.

We include, further, these resolutions:

(w) Worcester, Massachusetts. Diocesan Council of Catholic Women. 137 affiliated groups in Worcester County, Massachusetts, 35,000 members. Resolution of April 26, 1966, as follows "The Worcester Diocesan Council of Catholic Women strongly supports legislation to introduce a Constitutional Prayer amendment, * * *. As long as no action is taken by Congress, the democratic process is mocked, and the will of the great majority of the American people is thwarted."

(x) Springfield, Massachusetts. Pro-prayer amendment resolution. Letter June 10, 1966. Mrs. Evelyn Benedetti, President, Armory Street School Parent Teachers Association.

APPENDIX III

Because we believe with Senator DIRKSEN that it is "the voice of the common man" which must mostly be heard in these hearings, we reproduce herewith as an indication of the deep conviction of the people of Massachusetts a sampling of names of those who have asked us to speak for them here. Each of these names is attested by a written signature now in our possession. This list, again, is a sampling not by any means a total of supporting citizens on record in favor of a constitutional prayer amendment:

1. Edward F. Devanna, 20 Hartshone Street, Malden, Massachusetts.
2. James F. Forkin, 40 Tower Street, Jamaica Plains, Massachusetts.
3. Shirley Ponius, 8 Gleason Way, Leicester, Massachusetts.
4. Laura Marek, 675 Main Street, Shrewsbury, Massachusetts.
5. Sandra Credit, 12 Johnson Street, Millbury, Massachusetts.
6. John J. McCann, 6 Calumet Avenue, Worcester, Massachusetts.
7. John M. Shea, 237 Brigham Street, Marlboro, Massachusetts.
8. Laura R. Shea, 237 Brigham Street, Marlboro, Massachusetts.
9. Richard W. Smith, 15 Stevens Circle, Andover, Massachusetts.
10. Francis J. Brown, 296 Horse Pond Rd., Sudbury, Massachusetts.
11. Ronald M. Dagle, 4 Birch Circle, Hingham, Massachusetts.
12. Gordon S. Hemhaw, 62 Miles Street, Millbury, Massachusetts.
13. G. Albert Whittier, 64 Miles Street, Millbury, Massachusetts.
14. R. E. Peters, Winter Street, Medfield, Massachusetts.
15. Lillian Pulling, 8 Whittier Place, Boston, Massachusetts.
16. Bruce McDonald, 181 Chestnut Street, Wilmington, Massachusetts.
17. Russell C. Squires, Fairway Drive, Groton, Massachusetts.
18. Joseph A. Palner, 120 Essex Street, N. Quincy, Massachusetts.
19. William J. Hamilton, 15 Durant Road, Wellesley, Massachusetts.
20. Charles H. Keenan, 65 Brook Hill Rd., Milton, Massachusetts.
21. Clinton L. Pendleton, 49 Brookside Rd., E. Braintree, Massachusetts.
22. Muriel O. Knight, 50 Vincent Avenue, Belmont, Massachusetts.
23. Jeanette E. Morgan, 8 Garrison Street, Boston, Massachusetts.
24. Joseph F. Chisholm, 117 H Street, S. Boston, Massachusetts.
25. Robert V. Rooney, 26 Hodge Road, Arlington, Massachusetts.
26. Raymond G. Perigny, 100 Commonwealth Ave., Lowell, Massachusetts.
27. Alice E. Kimball, 131 Washington St., Brighton, Massachusetts.
28. Karen R. Beasley, 79 Norfolk Rd., Arlington, Massachusetts.
29. Susan D. Cook, 374 Chas. Hill Ave., Brookline, Massachusetts.
30. Marion D. Dalto, 1355 Washington St., S. Braintree, Massachusetts.
31. Katherine A. MacKinnon, 33 Bishop Rd., Walliston, Massachusetts.
32. Claire W. Butler, 68 Pontiac Rd., Quincy, Massachusetts.
33. Philip E. Johnson, 135 Lindbergh Ave., Needham, Massachusetts.
34. Delia H. Davis, Chatham Road, Harwich, Massachusetts.
35. Howard E. Needham, 19 Miller Street, Braintree, Massachusetts.
36. Mary F. Bell, South Street, Norwalk, Massachusetts.
37. Edwin N. Elliott, 360 Middle Street, Braintree, Massachusetts.
38. Edward F. Grimley, 90 Elmwood Rd., Needham, Massachusetts.
39. W. Frederick Luoma, 7 Harriman Rd., Hudson, Massachusetts.
40. Marjorie T. McGuiness, 66 Slade Street, Belmont, Massachusetts.
41. Sara L. Kinneen, 9 Gibson Street, Cambridge, Massachusetts.
42. Catherine M. Foley, 21 Fairbanks Street, Brighton, Massachusetts.
43. Kathleen R. Moore, 259 Beacon Street, Boston, Massachusetts.
44. Ann M. Hurley, 93 Rindge Avenue, Cambridge, Massachusetts.
45. Margaret F. Gallant, 35 Goldthwait St., Lynn, Massachusetts.
46. Elaine L. Goudrault, 1 Lymo Street, Salem, Massachusetts.
47. Daniel F. MacKillop, 62 Lovett Street, Beverly, Massachusetts.
48. Paul J. Martineau, 23 Sunset Avenue, Methuen, Massachusetts.
49. John J. Murphy, 44 Furber Avenue, N. Andover, Massachusetts.
50. Charles McDowell, 5 Maston Avenue, Chelmsford, Massachusetts.
51. Jack Ross, 31 Flint Street, Salem, Massachusetts.
52. Joseph R. Dolan, 286 Washington St., Salem, Massachusetts.
53. Sidney F. Hicks, 67 Adams Street, Haverhill, Massachusetts.
54. Fred Martin Jr., 9 Parsons Drive, Beverly, Massachusetts.
55. Mary E. Higgins, 116 Adams Street, Lynn, Massachusetts.
56. Mary F. King, 11 Jefferson St., Lynn, Massachusetts.
57. Ruth Boulanger, 309 Maple Street, Lynn, Massachusetts.
58. Angie Capomaccio, 42 Taylor Rd., Lynn, Massachusetts.
59. Forest A. Rogers, 10 Parramotta Rd., Beverly, Massachusetts.
60. Frederick W. Matthews, 538 Varnum Ave., Lowell, Massachusetts.
61. Raymond D. Whitney, 33 Halten Street, Danvers, Massachusetts.
62. Leo M. Michalski, 14 eBaver Park, Danvers, Massachusetts.
63. Alice M. Tobin, 50 Taft Avenue, Lexington, Massachusetts.
64. James M. Hogue, 225 Grove Street, Auburndale, Massachusetts.
65. Dorothy B. Shaw, 38 Dane Street, Beverly, Massachusetts.
66. Mary Barry, 48 Monument Square, Charleston, Massachusetts.
67. Horatio R. Selfridge, 41 Holden Street, Holden, Massachusetts.
68. David Hayward, 788 Circuit Street, Hanover, Massachusetts.
69. David E. Stuart, 18 Crestview Drive, Westboro, Massachusetts.
70. Arnold H. Turner, 26 Harrison Street, Framingham, Massachusetts.
71. Helen McNeil, 5 Wildwood Drive, Milford, Massachusetts.
72. Mrs. Clara Furbish, 25 Endicott Drive, Westborough, Massachusetts.
73. Margaret M. Collins, 460 Huron Avenue, Cambridge, Massachusetts.
74. Mr. and Mrs. Eugene O'Donnell, Broadmeadow, Rd., Marlboro, Massachusetts.
75. Margaret J. Murray, 43 Chesborough Rd., W. Roxbury, Massachusetts.
76. Laurent C. Jutras, 40 Congress Street, Amesbury, Massachusetts.
77. Evalyn Fitzroy, 41 Mechanic Street, Shelburne Falls, Massachusetts.
78. Mary Barry, 48 Monument Street, Charlestown, Massachusetts.
79. Henri J. Beauchemin, North Street, Norfolk, Massachusetts.
80. Arnold S. Gailey, 10 Idlewood Drive, Auburn, Massachusetts.
81. Frank R. Aspinwall, Upland Road, Southborough, Massachusetts.
82. Hugh T. McCann, Jr., Framingham Rd., Southborough, Massachusetts.
83. Roderick M. MacNeill, Woodland Road, Southville, Massachusetts.
84. Mr. and Mrs. Donald Hamelin, Winchester St., Southborough, Massachusetts.
85. Florence Fitzgerald, Turnpike Road, Southborough, Massachusetts.
86. Mr. and Mrs. Robert Delarda, 7 A Street, Southborough, Massachusetts.
87. Mr. and Mrs. Robert Williams, 8 Tara Rd., Southborough, Massachusetts.
88. Mrs. Nolia Beavis, Boston Road, Southborough, Massachusetts.
89. Mr. Ralph E. Gray, Stub Toe Lane, Southborough, Massachusetts.
90. Mrs. Mary E. McCann, Boston Road, Southborough, Massachusetts.
91. Cosmo D. Fabrizio, Flagg Road, Southborough, Massachusetts.
92. Mrs. William R. Nagle, Strawberry Hill, Southborough, Massachusetts.
93. Julia D. Fitzgerald, Marlboro Road, Southborough, Massachusetts.

94. Virginia L. Di Anzo, 28 Framingham Rd., Southborough, Massachusetts.

95. Mr. and Mrs. Jeanne Keefe, 10 Cross Street, Southborough, Massachusetts.

96. Mr. and Mrs. Wm. Colleary, Winchester St., Southborough, Massachusetts.

97. Mr. and Mrs. Richard Curran, Main Street, Southborough, Massachusetts.

98. Mr. and Mrs. David Pond, Upland Road, Southborough, Massachusetts.

99. Mr. and Mrs. David Schnare, Upland Rd., Southborough, Massachusetts.

100. Mr. and Mrs. Austin Maguire, Winchester St., Southborough, Massachusetts.

Mr. DIRKSEN. Mr. President, I merely want to tell the Senate and every Member of it that this issue will not die. This issue will not be diverted or subverted. It will not be settled until it is settled right, for when this session is over, another Congress will convene on the third of January of next year. That will be the 90th Congress. If we fail to act now, this resolution will be up again. I mean to have it back, because it is too important. Involved here is the moral future of America.

Mr. President, when I was a Member of the House of Representatives, I became acquainted with a young and attractive rabbi from Boston, Joshua Liebman. I shall never forget him. I learned to know him very well. He died at the premature age of 44. Coursing down LaSalle Street one day in Chicago, I stopped and gawked in the window of a book store. I saw a book written by Joshua Liebman, whose title was "Peace of Mind." I went in there and procured that book. It is a scintillating piece of literature, but one line in it I remember so well. He said: "You cannot reconstitute a society with unreconstituted individuals."

Mr. President, that is the story in a nutshell. It cannot be done. I think in proportion as we examine some of the mischief that is taking place in our country today, we had better conclude that what we are trying to do is reorder our whole social structure with individuals whose hearts have not been changed.

So that must be the goal. That must be the hope of America in the future.

How are we to achieve it? We learned long ago that as the twig is bent, the tree is inclined. That is what prayer means in the schools. Somehow, the children must get that orientation, each according to his own lights, each according to his own view, without compulsion or coercion, all on a voluntary basis. Then I think we shall begin to see some greater hope for a placid country.

I shall have occasion, I presume, to labor this subject again—perhaps tomorrow—but I shall close for tonight. I wish there were not a rule against printing cartoons in the CONGRESSIONAL RECORD, because I hold in my hand a cartoon that appeared in Church and State magazine. It shows what goes on in the ivory tower institutions.

Here is a cartoon showing me on a soap box. It is marked "soap." The cartoon even shows a crutch. There is a crutch in it, just like the one I now have. My mouth is open. There is a metal halo over my head. I am waving something. It says, "Prayer Amendment." It says, "Not a leg to stand on."

Yes; those are the people who occupy these ivory towers, who lost touch with the hearts and minds of our people long ago. They are no longer ministers of the flocks. No, they are these scintillating individuals and intellectuals who do not speak from the heart, and somewhere they lose all the blood, all the sentiment, and all the hope.

I may conclude this statement by thinking in terms of an experience I had with a man who ran for the Presidency of the United States. I was one of his speechwriters. At the end of the day we used to sit around after dinner and we would examine into our handiwork, good, bad, or indifferent.

But all hands went to the wheel, and we finally penned up the first speech to be delivered in the campaign.

There were a lot of scintillating personalities sitting around the table as that first effort was read. It was a gorgeous thing. There was not a comma or a period out of place. There was not a superfluous word in it whatsoever. There were no split infinitives. Never have I seen such etymological craftsmanship.

Then they went around the table to get the views of those who sat there. They got to me last. Finally, the man serving as chairman of the meeting said, "DIRKSEN, what do you think?"

"Why," I said, "it is a thing of sheer beauty. It is like an icicle shining in the light of a blue moon. But there isn't a teaspoon of blood in that speech."

It was as if I had dropped 10 tons of TNT on that group around the table that night. They went ahead and delivered it, and it turned out as I thought. It proved to be an absolute dud. There was nothing in it.

No; you are not going to take this away from the American people, because it is still their country. And as long as I have any breath left, and any energy, I am going to pursue that thesis, and I intend to do the best I know how to keep the nose of Congress to the wheel on every possible occasion until this prayer issue is settled, and settled right. Then we shall have shown a greater hope for this blessed country.

And so, Mr. President, I now submit my amendment as a complete substitute for Senate Joint Resolution 144, which is presently under consideration.

The PRESIDING OFFICER. Does the Senator wish to call it up at this time?

Mr. DIRKSEN. Yes.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. DIRKSEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIRKSEN'S amendment is as follows:

AMENDMENT NO. 930

On page 2, beginning with line 1 strike all down through and including line 11, and insert in lieu thereof the following:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

" 'ARTICLE —

" 'SECTION 1. Nothing contained in this Constitution shall prohibit the authority administering any school, school system, educational institution or other public building supported in whole or in part through the expenditure of public funds from providing for or permitting the voluntary participation by students or others in prayer. Nothing contained in this article shall authorize any such authority to prescribe the form or content of any prayer.

" 'SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.' "

Mr. DIRKSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceed to call the roll.

Mr. MORSE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE PHILIPPINE PRESIDENT AND U.S. POLICY IN ASIA

Mr. MORSE. Mr. President, for the last week, and apparently for another week to come, the President of the Philippines will be a guest in the United States. But he is not here as a guest; he is here as a highly partisan advocate of more financial aid for his country in exchange for his support of U.S. policy in Vietnam. From the most prominent platforms the United States has to offer, he is encouraging us to keep fighting all over Asia. But nowhere does he tell the American people the price tag on his support of these efforts.

The 2,000 Philippine troops that will soon arrive in Vietnam will not do any fighting. Nor will they be the financial responsibility of their home country. They will be the financial responsibility of the United States, for we will pay their salaries, pay their upkeep, and provide their equipment.

I know the old term "mercenary" is unpopular when it is the United States that does the hiring, but that is what these Philippine engineers are.

And they are a new and more costly form of mercenary. We not only have to pay for the costs of the soldiers, we have to pay their Government for their use.

The price for this facade of help from an Asian country comes high. The United States since World War II has given the Philippines $1 billion of economic aid. The level of economic assistance for the current fiscal year is around $20 million. A great proportion of aid to the Philippines has gone, according to the program books furnished the Foreign Relations Committee each year, into rural development.

Yet the economy of the Philippines is in worse shape than it has ever been since the end of the war. It is described as "sagging," "stagnant," and in the rural areas, as giving rise to discontent and providing a seedbed for a new resurgence of communism. It is no wonder that its President needs some basis for which to lay claim to a doubling or a tripling of American aid.

He is willing to hire his soldiers out as mercenaries to the United States, and the sad reflection on the history of the United States is that the United States is willing to hire them.

So, in addition to paying the full cost of the 2,000 engineer troops out of our defense budget, the American people will give the Philippine Government an additional $55 million worth of economic aid on top of the ongoing program for the current fiscal year.

The sad state of the Philippine economy, despite considerable American aid over the years, bespeaks the impossibility of that country making a contribution to the Vietnam war out of its own economic resources. It has to supply those mercenaries at the expense of the American taxpayer. Economically, it can barely support itself without a war effort. This means that anything they contribute to Vietnam has to be paid for by the U.S. taxpayer.

In terms of its manpower contribution, the 2,000 troops are not for combat purposes. They are there to serve the appearance of support for the war by an Asian country, an appearance the United States desperately needs as it makes the war more and more an American war.

Recently, I have addressed a letter to William Gaud, of the Agency for International Development, concerning the nature of the additional aid to be extended and the prospects for its effectiveness.

Mr. President, I am also addressing a letter to the Department of Defense to seek its estimate of how much it will cost the United States to support the Filipino soldiers in Vietnam.

CURTAIN OF SECRECY AROUND THAILAND

A second element in our growing use of small Asian countries to serve as American bases and support elements against China is taking place in Thailand. Tomorrow, the Senate Foreign Relations Committee will seek to find out what is being done by American forces in Thailand, and what secret agreements and commitments have been made to that country.

Of course, all the American people are entitled to know what has been and is being done in their name. They are paying the bill, and our boys are bleeding as a result of this mistaken and unjustifiable immoral and illegal course of action of the United States in Asia. But the administration has drawn an iron curtain of secrecy around Thailand. Witnesses for the administration will be heard only in secret, at their insistence.

This administration continues, in my judgment, to perform a great disservice to representative government in failing to recognize that in a democracy there is no substitute for a full public disclosure of the public's business.

The American people are entitled to know and not be kept in the dark while the shocking war is perpetrated upon them.

This administration dares not to tell the American people just before an election what they are committing us to in Thailand. It will affect the pocketbook of every citizen, and it will affect the lives of many of our young men. One of the great ironies of secret diplomacy and secret commitments is that no matter how secretly they are entered into, there is no secrecy when the draft calls go up, the Reserves are called into action, and taxes are raised to pay the cost.

It is at that point that the people, and often the Congress, find out what the secret commitment really was. And then we are told we have no choice but make good on it or we will be letting down someone in the administration or letting down the boys in Vietnam.

I repeat, unpleasant as it is for my colleagues to hear again, that those who are letting down the boys in South Vietnam are those who are voting the money with which to kill them, and although those of us who are voting against the escalation of war are the subject of castigation and abuse in this country at the present time, we are satisfied that history will sustain us.

We believe in exercising the check of the purse strings written into the Constitution by farseeing Constitutional Fathers. If we do not agree with a President's policy, then we should not vote him the money with which to carry out his policy and he will have to change his policy.

That is why the senior Senator from Oregon intends, short of a declaration of war, to continue to vote against giving to this administration the money with which to kill American boys in South Vietnam, boys who should not be there at all.

Before the hearing is even held by the Committee on Foreign Relations, I can tell the American people approximately why the administration is thrusting the United States deeper and deeper into the territory of Thailand, which is anything but a democracy. It is ruled by a junta, and I suppose we can expect the administration to be telling the American people with its misleading propaganda that we are going to engage now in this activity to promote freedom in Asia.

Thailand does not understand the meaning of freedom. I am beginning to wonder whether my administration does.

It will be said that, geographically, Thailand bears a signficant relationship to the access to the Indian Ocean. Like South Vietnam, it abuts on the straits between the Pacific and the Indian Ocean, which is now a part of an American lifeline of empire extending from Hawaii to the Mediterranean.

What used to be the British "lifeline of empire" is now the American lifeline. Like Britain before us, we find it necessary to maintain a degree of control over all its approaches. Britain colonized India and Australia; and in order to guard the lifeline to those territories, she also colonized Burma and Malaya, and built her huge naval base at Singapore.

The American interest in these and neighboring territories is now the same as the British interest used to be.

It is only a matter of time before the British will be put out of Singapore; and in due course of time the United States will be put out of Asia. It may take several decades and the lives of tens of thousands of American soldiers and billions of American dollars, but it is bound to happen. In spite of our grandiose delusions as a people these days, we had better face up to the realities of what history is going to prove.

No Western power, including the United States, will be allowed by millions of Asians to establish any permanent, dominating foothold in Asia, any more than were the British, or the French, or the Dutch, or any other Western power. I wonder, Mr. President, whether if we were Asians we would feel any differently than the Asians do.

A reading of the articles appearing in various semiofficial military publications tells of plans now being considered in the Pentagon to replace with U.S. vessels the British naval forces in the Indian Ocean, and perhaps to build an American naval base on the western coast of Australia to supply and maintain them. But that means we also must maintain all the access to the Indian Ocean and the straits that connect it to the Pacific.

It is in the nature of things that all of this is dressed up in phrases about helping people to defend themselevs. The iron glove of military power must be covered with the velvet glove of rhetoric to salve our national consciences. But it is the same rationale of the white man's burden that we heard for generations from the British. Unfortunately for the truth, we will not be told that the U.S. buildup of bases in Thailand largely preceded the increased guerrilla activity there.

Those in northeast Thailand who are fighting this intervention on the part of the United States hold a political philosophy that I abhor. But that does not make our intervention right.

The real rationale that puts our forces into the Indian Ocean and into Thailand is one of military strategy. The rhetorical justifications about defense of freedom come after the military decision has first been made.

I predict that in these hearings, which will be secret, even Senators will be told nothing about the actual and potential cost of our involvement in Thailand. It represents another Vietnam. The one foot enmeshed in South Vietnam with 300,000 troops at a cost of $1½ billion a month will be matched with another foot equally enmeshed in Thailand.

No wonder the administration will not discuss this subject in public.

FIFTEEN-YEAR-OLD BUILDUP IN EUROPE SHOULD BE REDUCED

In the near future, Mr. President, another foreign leader is coming to the United States—Chancellor Ehrhardt. The press of yesterday and today reports that he has made statements in Germany that he is coming to press for a hard line. Apparently, by a hard line

he means that he will continue to insist that the United States keep large American forces in Germany.

But I hope that the Chancellor of Germany will be prepared to tell the American taxpayers how much it will cost them, and why West Germany has never made good on commitments she has pledged in regard to maintaining troops for European defenses.

It may be easy for the Chancellor of Germany to take the position that we should keep approximately 400,000 American troops in Europe at the expense of the American taxpayer, while his own country, more prosperous than ever in the history of Germany, has failed to date to meet its manpower commitment under the European defense program to which West Germany is a party.

Of course, that applies to the Prime Minister of Great Britain, who gives lipservice to the United States in regard to our South Vietnamese program, but who does not have a British boy dying in South Vietnam, and who plans to withdraw many from Europe.

I state again that I am not at all interested in the professings of the Prime Minister of Great Britain in regard to his support of American policy in Vietnam, as long as the British are not willing to send troops there and do some of the dying. That applies to the Prime Minister of Canada, Mr. Pearson, as well. In fact, may I say that it goes for all our so-called allies who from time to time are willing, with their rhetoric, to egg us on as we involve ourselves more and more in the war in Vietnam.

Mr. President, I want to say again to all our so-called allies who from time to time give lipservice in regard to the war in Vietnam, and who, as I have said in the past, are what I call "egger-oners," perfectly willing for us to do the dying in Vietnam, perfectly willing for the American people to spend the billions of dollars that are being spent in this unjustifiable war in Vietnam:

When are you going to live up to your signature, and your obligations under that signature, to the United Nations Charter? When are you going to proceed to call the United States to an accounting for its violations of the United Nations Charter? When are you going to decree that the United States must stop this war in Vietnam? Which means, of course, that you will have to carry out your obligation to enforce the peace. For that was what the United Nations was set up primarily to do.

And so may I say to Canada and Great Britain and France and all the other signatories of the United Nations on the so-called free side of the world, as well as to Russia and all the Communist nations on the enslaved side of the world:

When are you going to keep your commitments?

A new session of the General Assembly of the United Nations is about to convene. I am sad that apparently there is no intention on the part of my Government to be represented at that General Assembly, with a plea—preferably from my President—calling upon the United Nations to proceed to enforce a peace and bring to an end the threat in Vietnam to the peace of the world.

History is of the making. The great danger facing mankind is that the failure on the part of our so-called allies, as well as the failure of our own country, to live up to the responsibilities of their signatures to the United Nations Charter is endangering mankind, by being involved in world war III, out of which will come no victory.

I think that is the great issue that faces the people of my country as well as the people of the world. That is why I rise once again on the floor of the Senate, as I have done many times the last 3 years, to protest the foreign policy of my country, to protest this afternoon the hiring of Filipino mercenaries, to protest this afternoon pouring additional millions into the Philippines in a form of repayment for the type of noncombat service that the President of the Philippines will give this country.

Mr. President, when will we return to our ideals? When will we return to keeping faith with the glorious past of this Republic? There was a time in the history of this great Nation when we were not following a course of action that threatened the peace of the world.

We, more than all other nations combined, stand today as the greatest threat to the peace of the world by the war which, for the most part, we are conducting on a unilateral basis in Vietnam.

I still have faith and I shall continue to have faith to my dying day that once the American people come to understand the true import of the foreign policy of the United States, at that time they will insist that whatever administration is in power at that time change that foreign policy by returning to that great professing of ours that we believe that threats to the peace of the world should be settled by the application of the rules of international law and not by the jungle law of military force.

MARY T. BROOKS

The PRESIDING OFFICER (Mr. RUSSELL of South Carolina in the chair). Two hours having expired since the Senate convened at 3:05 p.m., the Chair lays before the Senate the unfinished business.

The Senate proceeded to consider the bill (S. 3553) for the relief of Mrs. Mary T. Brooks, which had been reported by the Committee on Rules and Administration, with amendments, on page 1, line 3, after the word "That", to insert "(a)", and on page 2, line 5, after the word "erroneous", to strike out "separation." and insert "separation and the period January 13, 1966, through February 26, 1966, shall be deemed a period of creditable Federal service by Mrs. Brooks for retirement and related purposes. The Public Printer is further authorized and directed to pay out of the cited revolving fund the agency contributions for retirement, life insurance, and health benefits purposes which would have been required by law had Mrs. Brooks been in paid employment during the period of her erroneous separation."; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Public Printer is authorized and directed to pay out of the revolving fund of the Government Printing Office the sum of $742.40, representing salary due Mrs. Mary T. Brooks, an employee of the Government Printing Office, for the period January 13, 1966, through February 26, 1966, when she was separated from her employment due to the erroneous notification by the Civil Service Commission of approval of her application for disability retirement. After tax withholding, payment of group life and health insurance premiums, and deductions of amounts due the Civil Service Retirement and Disability Fund, the balance of the amount hereby appropriated shall be paid to Mrs. Brooks in full settlement of any and all claims against the United States arising out of her erroneous separation, and the period January 13, 1966, through February 26, 1966, shall be deemed a period of creditable Federal service by Mrs. Brooks for retirement and related purposes. The Public Printer is further authorized and directed to pay out of the cited revolving fund the agency contributions for retirement, life insurance, and health benefits purposes which would have been required by law had Mrs. Brooks been in paid employment during the period of her erroneous separation.

(b) No part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Mr. MORSE. Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments are considered and agreed to en bloc.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the third reading of the bill.

The bill was read a third time and passed.

NATIONAL UNICEF DAY

Mr. MORSE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1283, Senate Joint Resolution 144, the joint resolution to authorize the President to designate October 31 of each year as National UNICEF Day. I do this so that the joint resolution will become the pending business.

The PRESIDING OFFICER. The joint resolution will be read by title.

The LEGISLATIVE CLERK. A joint resolution (S.J. Res. 144) to authorize the President to designate October 31 of each year as National UNICEF Day.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The question is on agreeing to the amend-

ment of the Senator from Illinois [Mr. DIRKSEN] to strike out all after the resolving clause on page 2, beginning with line 1 through and including line 11, and insert in lieu thereof the following:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE—

"SECTION 1. Nothing contained in this Constitution shall prohibit the authority administering any school, school system, educational institution or other public building supported in whole or in part through the expenditure of public funds from providing for or permitting the voluntary participation by students or others in prayer. Nothing contained in this article shall authorize any such authority to prescribe the form or content of any prayer.

"SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."

CONSERVATION IN A TIME OF CHANGE

Mr. MORSE. Mr. President, on September 15, 1966, Mr. Boyd Rasmussen, Director of the Bureau of Land Management, spoke to the Western Wood Products Association's annual meeting at Portland, Oreg. I ask unanimous consent that his speech, "Conservation in a Time of Change," be inserted in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MORSE. Mr. President, this is a speech which deserves a careful reading. It is a speech directed toward responsible conservationists in all walks of life.

It is a speech which is frank. It is a speech that charts a course of cooperative conservation.

I take particular note of Mr. Rasmussen's constructive statements on forestry policy, especially sustained yield forestry, multiple use and allowable cuts.

I am pleased with Mr. Rasmussen's pledge to melt the forestry challenges on the Bureau of Land Management vital forests in Oregon and elsewhere in the West.

I am confident that responsible conservationists will join in supporting the constructive courses Mr. Rasmussen outlines.

EXHIBIT 1

REMARKS BY BOYD L. RASMUSSEN, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE WESTERN WOOD PRODUCTS ASSOCIATION, PORTLAND, OREG., SEPTEMBER 15, 1966

It is good to be back in Oregon. It's good to visit with old friends and to make new acquaintances. I grew up in Oregon, went to school here and started my conservation career here. Your own Ernie Kolbe was my first Forest Service boss. Great changes have occurred throughout the West since my youth. These changes represent efforts to meet the needs of a growing nation.

I am especially pleased to make my first formal talk as Director of the Bureau of Land Management before this group.

You have asked me here because you are wondering what new programs can be expected under my administration.

You can expect some changes, not because I am now the director of this bureau, but because events of our time are moving rapidly, and this in itself means change.

I want to talk honestly and frankly with you about BLM's programs. First, let's talk about the questions posed in your gracious invitation.

Will industry problems be considered when new BLM programs are developed? The answer is yes. So too will the problems of all who have an interest in the public lands.

We are going to seek solutions which help the greatest number of people and provide the most lasting public benefit. This is easy to promise in the abstract, but it is harder to do in the specific. So, the first thing I am going to assure you is that we will consult, we will welcome your views, and we will invite your counsel. At the same time, I promise we will try to reach decisions with reasonable dispatch.

Like those of you here who are responsible to a board of directors, there will be times when I have to implement the decisions of comparable Federal groups. In these circumstances, we will try to explain our actions to all concerned, because we know that good communications are absolutely essential.

Your invitation said that user groups on public lands have a fear that new regulations by government may overlook their needs and so make some real problems for them. I would hope that this has no basis. But I want, and expect, your concern about policy and program. It is this concern by the many user publics that helps chart the direction of public land management. It is our job as public land administrators to make sure that all groups are heard; that the needs of each are properly considered. For we manage these lands for people rather than for the lands alone.

Your invitation said some people fear I might adopt precipitously Department of Agriculture procedures in a way that would increase costs, or have other upsetting impacts on them. When I took the oath of office as Director of the Bureau of Land Management, I did so without any reservation whatsoever. I swore I would faithfully discharge the obligations I have assumed. I intend to do just that. When I assumed this job I went to work for the Secretary of the Interior. But let me say I am ready to beg, borrow and if need be, to steal the best techniques to get a good job done. It does not matter whether good ideas come from the forest industry, state or county government, the Forest Service, or the Department of Health, Education and Welfare. You'll find me receptive to new ideas and totally uncommitted to any past employer.

As I worked on this speech, I kept turning over in my mind the concepts involved in your concern over possible actions that might increase costs. I can see how we might adopt some ideas that you think, and we think, could increase *your* cost of doing business. It occurred to me that you, too, may urge us to adopt some changes that increase the Government's cost of doing business. Increased cost considerations to you or to us will not be the deciding criteria in my decisions. My scale has a place to weigh benefits as well as costs. We are under constant pressure to increase benefits and to reduce our costs, to make our dollar do more. So, I am not only going to be cost-conscious; I am going to be benefit-conscious.

One complexity in public land management is getting agreement on what is the public interest. Another is how to harmonize competing interests so that the public interest is truly met.

One of the first things that struck me as I dug into this new job is its multiple mission—to dispose of land and to retain and manage land. No other Federal agency has this sort of charter.

Next, I was struck by the gamut of means of disposal. Under some laws we have complete administrative discretion; in others we have far less. We don't have to accept an application by a state under the Recreation and Public Purposes Act, but on state selections the state can file and we must act one way or the other.

Then I was struck by the fact that interest in and competition over acquiring BLM lands largely centers on a few areas. In other words, we either have 3 or 4 people or entities seeking the same tract, or else no one.

We conduct the world's largest real estate operations. Last year we transferred over 700,000 acres from Federal ownership and we granted special use permits on another 870,000 acres. Yet, we don't have a single real estate salesman out drumming up business.

Leaving aside the quarter of a billion acres BLM administers in Alaska, here in the western states is an organization with 175 million acres of grass, timber, desert and swamp land. There are 4½ million acres of commercial forest land of which about half is in Oregon. About 15 million acres are under lease for oil, gas and other mineral development; 140 million acres are under grazing leases to 26,000 ranchers as a part of a complex of 270 million acres of closely intermingled other public and private land. This BLM land, with a big game population of some three million animals, is significant wildlife habitat for a great deal of the West. These lands are heavily used for hunting, fishing, rock collecting and all forms of outdoor recreation. They provided over 27 million visitor-days of recreation last year. Some is wilderness, not because we made it this or call it this, but just because it is. Virtually all of this land plays a vital watershed function.

On top of this, BLM is the nation's basic surveyor. One and one third billion acres have been survey and 470 million acres remain unsurveyed, mostly in Alaska. Last year 2½ million acres were surveyed.

From the vantage point of this podium, I see, hear and think about timber problems, but as soon as I leave here I am faced with the myriad of other resource conservation issues, too.

This Bureau has no idle lands. They are either adding to or substracting from our national wealth. The issue that confronts us, whether it's in forest lands or swamps, is how to increase the pluses and decrease the minuses.

For the great bulk of the land, the 1934 Taylor Grassland Management Act operates like a blanket with the other public land laws. Yes, you heard me correctly, the Taylor Grazing Act is a Grassland Management Act—and more—for since 1934 it has been the key to BLM's program of land classification, disposal and retention.

The 1964 Classification and Multiple Use Act is an act of even larger significance. It has set into motion positive classification steps. It has set into motion positive consultation on the ground. It has spelled out concepts of disposal and multiple use management for lands to be retained.

Coupled with the Public Land Law Review Act we are on the road to meeting the

issues of our times—conservation in a time of change.

Years ago Alexander Hamilton secured the adoption of a policy of public land disposal by sale, the proceeds of which he envisioned would finance the national government.

Abraham Lincoln promulgated the free land policy as embodied in the Homestead Act. Cleveland, McKinley and Roosevelt fashioned the concept of land retention.

Each in his time was right, but now it's time to take another look ahead. Congressman ASPINALL's idea of a public land review was as timely as it was necessary. The Public Land Law Review is one of the most exciting steps taken in conservation in this century. It has my enthusiastic support and interest. We in BLM will be doing our part to assist. In the companion 1964 Classification Act that he fashioned, Congressman ASPINALL gave us a responsibility and the tools with which to meet it. In order to provide the Commission with the maximum amount of information, we are trying to complete, with full local participation, as much of the classification of BLM's land as possible. I want to make it clear that the authority of the 1964 Act expires in 1969.

Now, let's talk about timber, especially western Oregon. For it's here that lies the bulk of BLM's high productivity forest.

ALLOWABLE CUTS, EVEN FLOW AND SUSTAINED YIELD

BLM lands in western Oregon are producing timber sufficient to permit a harvest of 500 b.f. per acre per year, 150 per cent higher than the average net annual growth on forest lands in western Oregon. Our task is to improve this and still meet all other multiple use requirements. These western Oregon BLM lands have a wonderful capacity to produce timber, and we intend to realize it. Catastrophes such as the 1962 Columbus Day storm, the 1965 flood and this year's Ox Bow fire, which could hit half a billion board feet, complicate management. They require constructive caution and rapid adoption of tested new ideas to insure high and increasing forest productivity.

One aftermath of the 1962 havoc was the need to recompute allowable cuts. We had two alternatives: either apply existing systems, which would have produced reductions in some timber management units; or look at new concepts and criteria which researchers have been perfecting. We chose the latter and we are working to this end. To assure initial public understanding, a subcommittee from the O&C Advisory Board has been appointed to work with us. We intend to assure even broader public participation before we adopt changes. I am sure you appreciate that we view our Advisory Board as our first line of continuous consultation.

BLM's allowable cut rose from 200 b.f. per acre per year in 1948 to the present 500 b.f. per acre per year—and I'm going to go out on a forester's limb—let me say I think the eventual potential we can realize on these lands is much greater. More intensive timber management on these lands will help us fulfill our opportunity to make our pro rata contribution to this area's well being.

The goal is set—the route there requires markets for thinnings and salvage, advance roads on a timely basis, prompt stand regeneration, improved protection from catastrophes and an early fair trial of new techniques coming from research facilities, and finally funding.

What about "even flow?" I've already said BLM could increase its output by intensifying management. The mix of products will change as will log size, quality and species. Our goal is to do our part in providing a *permanent support* for the wood-using industry.

This is what sustained yield and dependent community stability are all about. Private timberland owners, too, must meet their obligations.

Proposals that are predicated on a timber supply adequate to meet the needs of the *installed* processing capacity cannot be effective where it exceeds the dependent land's productive capacity.

We have reached the point in American forestry where industry and government must both effectively practice sustained-yield timber management. Fortunately, there is no longer any argument on that score between a majority of timberland owners and government. Without public and private timber-growing enterprise operating on a continuous yield basis, timber-utilization enterprise cannot permanently survive.

In this, as in other elements of forest policy, public interest will keep all viable proposals under study and review.

Forest policy involves more than growing and cutting timber. It is the management of forested land for its water and soil values, for wood, recreation, wildlife and minerals. Scientific corridors and staggered settings must be managed to meet the multiple needs.

Earlier, I mentioned the fact that we both have others involved in our management. I, too, have auditors, budget officials and top management in the department. The cold hard fact is they, as well as BLM, were created by law and they like we have well-defined duties and responsibilities.

TIMBER BIDDING AND SALES

In February 1965, the Comptroller General made public some observations on timber bidding. Then in June 1965 the Budget Director who implements the President's user charge policy, suggested to the Secretaries of Interior and Agriculture that they should evaluate the results of timber pricing systems.

On the bidding, the Department had suggested that BLM use a sample of sealed bids. BLM people met with some of you in July 1965 and you expressed opposition to sealed bids. The Department then suggested we explore this subject with the O&C Advisory Board which recommended:

(A) that we use sealed bids "only where a careful study of all factors in a particular situation indicates that desirable competition will result without harm to the economy."

(B) that BLM insure for the Government "a fair return for its timber by maintaining appraisal procedures which reflect current conditions."

So on the bidding the Board's views paralleled the views expressed by the Comptroller General and on pricing the views expressed by the Budget Director.

What we got from the Budget Director was a request to review pricing procedures and what we got from the Comptroller was a suggestion on bidding for us to consider. The Bureau of the Budget study takes precedence. We are addressing ourselves to the question of whether our *appraised* prices represent an equitable return on timber offered for sale. We along with Forest Service and the Bureau of the Budget are looking at it against the background of what is bid for timber—currently in our case for the past fiscal year a figure which averaged 70% above appraised rates. We are looking at it in the light of profit data for the industry developed in a study the Forest Service made. We are also looking at our procedures in the light of differences in the ways federal agencies price the same product. And, finally, a part of the study involves bidding systems.

Since this is a study under the leadership of the Bureau of the Budget, we in BLM as well as Forest Service must operate it under their ground rules. I can assure you we have placed before them not only the background and results of earlier studies, but, also the views of industry, past and present. This study is still in process.

We have a significant completed action which culminates 3 years of joint efforts with industry—the new timber sale regulations and contracts that became effective this July. I hope these better meet our mutual needs. If they don't, we will be glad to sit down and discuss the situation after they have had a reasonable trial.

Also our current timber inventory, now in its second decade, incorporates the new 10-point sampling method. We are field testing the 3–P sampling system for timber sales. If it proves out we expect the benefits to you will be more accurate sale volume estimates and to us reduced operating costs.

Because of some of the things I've said about my attitudes and other things I've recited about cooperation between BLM and the Forest Service, let me recall a little history so it all stays in perspective.

Back in 1956, BLM Director Woozley and Forest Service Chief McArdle, sitting together before a joint congressional committee on timber and of their own free wills, proposed continued joint interagency efforts to achieve better resource management. They said then that relationships had never been better and they organized joint groups to tackle common problems. In 1961 Secretaries Udall and Freeman, citing progress made, outlined new goals. Each year since then, there have been joint BLM-Forest Service discussions, each Director with his principal staff in attendance. This doesn't mean we have reached uniformity, that we are about to, or that it is desirable in every case. But, I want to say that as one who has participated in these meetings, we are bridging the gaps as we learn from each other.

So, there is a long history now to this era of cooperation. It involves both Bureau heads and Secretaries under 2 administrations who for a decade now have practiced cooperation as the course to conservation progress.

Time does not permit me to talk even longer about some of the exciting things BLM is doing, for example, on its range lands east of the Oregon Cascades and in the other western states.

But I do extend to you an invitation. Whenever business or hunting or fishing takes you near any BLM office, drop in—you're welcome. You don't have to have a problem to come in our door. If you're at Vale, for example, look over what's being done there for the grasslands. While you're at it, you just might run into one of our people who know where the hunting is best or the fishing is good.

Let me summarize by saying that I have no plans for sudden changes; no plans for dramatic action. I do have plans for solid, constructive achievements, which we will work out cooperatively as we proceed to meet the challenges which confront us. It has been six weeks since I assumed leadership of the Bureau of Land Management. That's just long enough to know I have a tough job, but certainly not long enough to know all of the answers.

I can promise you that BLM will be tackling conservation problems on the public lands with vigor and determination. We look forward to a fine cooperative relationship with you members of the forest industry as with all others concerned with management of these lands. All we ask of you is your understanding of our problems. I pledge you my efforts to understand yours. As we achieve understanding, your needs will have our support and thus I hope our obligations will merit yours.

It has been a genuine pleasure to appear before you on this silver anniversary year of your tree farm program.

I cannot close this speech without taking this opportunity to say what I would have

said from my previous position about tree farms. This 25-year sustained private effort has benefited the nation because it has built a forestry and conservation awareness in the industry at a far greater rate than occurred in the previous half century. I salute the progress you have made. I know that the next 25 years will show even greater progress in the goal we all share—wise land use.

Thank you.

ADJOURNMENT

Mr. MORSE. Mr. President, in accordance with the order previously entered, I move that the Senate stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 12 minutes p.m.) the Senate adjourned until tomorrow, Tuesday, September 20, 1966, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate September 19 (legislative day of September 7), 1966:

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

Werner A. Baum, of New York, to be Deputy Administrator, Environmental Science Services Administration (vice H. Arnold Karo).

U.S. ATTORNEY

Edwin L. Miller, Jr., of California, to be U.S. attorney for the southern district of California for the term of 4 years to fill a new position, to become effective September 18, 1966, created by Public Law 89-372, approved March 18, 1966.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 19 (legislative day of September 7), 1966:

DEPARTMENT OF DEFENSE

Paul C. Warnke, of the District of Columbia, to be General Counsel of the Department of Defense.

Russell D. O'Neal, of Michigan, to be an Assistant Secretary of the Army.

EXTENSIONS OF REMARKS

The 235th Anniversary of the Birth of Maj. Gen. Wilhelm von Steuben

EXTENSION OF REMARKS
OF
HON. EDWARD J. DERWINSKI
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Monday, September 19, 1966

Mr. DERWINSKI. Mr. Speaker, Saturday September 17, marked the 235th anniversary of the birth of Maj. Gen. Wilhelm von Steuben, an outstanding German military leader who made invaluable contributions to the achievement of American independence. In this regard, it is significant that September 17 is also the anniversary of the signing of the Constitution. Our freedom was made possible, in part, to Von Steuben's achievements during the Revolutionary period.

Von Steuben came to our land to help Americans in their struggle for independence and gave his services to the Continental Congress without charge. He evidenced such ardent loyalty to the American Revolutionary forces and the ideals for which they were fighting that Gen. George Washington, learning of the practical knowledge and experience in military matters which Von Steuben possessed, chose him to be the Acting Inspector General of the American Army and put him in charge of training our troops.

In addition to distinguishing himself at the battles of Monmouth and Yorktown and in his work training the American soldiers, he wrote a basic training manual entitled "Regulations for the Order and Discipline of the Troops of the United States." The leadership and professional training he contributed to the American independence movement was indeed invaluable.

After achieveing independence, General von Steuben continued his service to our country, became a citizen, and aided George Washington in working out preparations for the defense of the United States and the mobilization of our Armed Forces. The letter of commendation for his services to the United States which he received from General Washington was our first President's last official act before relinquishing his command of the Army in 1783.

We join the members of the Steuben Society of America in paying tribute to this patriot whose principles, democratic spirit, and achievements serve as an inspiration to us to rededicate ourselves to the doctrine of the Constitution and the ideals on which this great country was founded.

Yom Kippur

EXTENSION OF REMARKS
OF
HON. GLENN CUNNINGHAM
OF NEBRASKA
IN THE HOUSE OF REPRESENTATIVES
Monday, September 19, 1966

Mr. CUNNINGHAM. Mr. Speaker, Yom Kippur, the Day of Atonement, is the most solemn and holy of all Jewish religious observances. On this day, which this year begins at sundown, Friday, September 23, devout Jewish men and women observe a complete fast as they seek forgiveness for their sins. Even young children try to abstain from food for at least part of the 24-hour period.

Jews throughout the world seek forgiveness on this day not only from God, but also from their fellow men. This great religion teaches its followers that one cannot ask God's forgiveness for wrongdoing unless the foregiveness of those whom one has wronged has also been sought.

In their synagogues, the opening liturgy is the Kol Nidre, hauntingly beautiful, which asks the forgiveness of sins by the Almighty:

For all our sins, Oh God of forgiveness, hear with us, pardon us, forgive us. For the sins that we have sinned against Thee under stress or through choice . . . in stubbornness or in error . . . in the evil meditation of the heart . . . by word of mouth . . . by abuse of power . . . for all these sins, Oh God, forgive us.

To all my Jewish friends, I wish a blessed Yom Kippur, and a Happy New Year.

Maj. Gen. Thomas G. Corbin, Director of Air Force Legislative Liaison, To Be Transferred

EXTENSION OF REMARKS
OF
HON. CHARLES S. GUBSER
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Monday, September 19, 1966

Mr. GUBSER. Mr. Speaker, I have heard it said that if you want to know a man do business with him. But if you want to understand him take a trip with him.

Mr. Speaker, some weeks ago it was necessary for us to say goodby, with reluctance, to a man, Maj. Gen. Thomas G. Corbin, Director of Air Force Legislative Liaison, whom many of us are privileged to know and understand.

Of course, we were pleased that he was to be transferred to a new and more challenging position, but nevertheless we shall miss a good friend.

All of us who did business with General Corbin learned to respect him for the splendid service he rendered our constituents through us. His office was operated fairly and efficiently, with the best interests of the Nation as well as the Air Force in mind at all times. I found my constituents' problems considered with compassion and with a thoroughness that was all and more than any of us should expect. Doing business with General Corbin was a great source of satisfaction.

But I was to enjoy a special privilege—that of taking a trip with General Corbin and learning to know and understand him as a friend. In the fall of 1965, the Special Investigating Subcommittee of Armed Services, on which I serve, visited every major military supply center in an extensive 5-week trip around the world. Those of us who traveled with General Corbin appreciated his diligence